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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No 220.

JOHN W. McDONALD, RECEIVER OF THE FIRST NATIONAL BANK OF ORLEANS, NEBRASKA, APPELLANT,

vs.

CHAUNCEY DEWEY AND CHARLES T. KILLEN, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF CHARLES P. DEWEY, DECEASED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED APRIL 5, 1905.

(19,697.)

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1903.

No. 1054.

JOHN W. McDONALD, RECEIVER OF THE FIRST NATIONAL BANK OF ORLEANS, NEBRASKA,

Appellant,

vs.

CHARLES P. DEWEY, FREDERICK L. JEWETT, ET AL.

Appellees.

MR. F. M. HALL,
MR. EUGENE E. PRUSSING,
Counsel for Appellant.

MR. ANDREW E. HARVEY,
MR. R. S. THOMPSON,
Counsel for Appellees.

Appeal from the Circuit Court of the United States for the Northern Dist of Illinois, Northern Division.

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record

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

John W. McDonald, Receiver of the First National Bank of Orleans, Nebraska,
Appellee.
—*vs*—
Charles P. Dewey, *et., al.*,
Appellants.
} Stipulation.

Whereas there is a large and voluminous record in this case consisting of about twelve hundred pages, and neither the appellant or appellee are desirous of having the whole of said record printed because of the expense that it would incur, and for the purpose of saving costs and expense in this case it is hereby stipulated and agreed that the abstract of the evidence that has heretofore been prepared and used in the trial court of this case may be printed as the printed record, together with such other parts of the record as either party may desire, the same to be hereafter designated as soon as Mr. Harvey can take the matter up on his return from a professional engagement in Kansas, and it is agreed that neither party shall in any way be prejudiced by the delay in designating the other parts of the record that is to be printed; the matter of the printing of the record to stand in abeyance until Mr. Harvey's return from Kansas when the matter is to be taken up and determined definitely just what other additional parts of the record is to go into that part of the record that is to be printed.

E. E. PRUSSING and
F M HALL.
for Comp.

A. E. HARVEY
for Deft

A tabulated statement is herewith inserted showing the number of shares of stock held and owned by C. P. Dewey, taken from the copies of the original certificates introduced in evidence when the above witness, John A. Randall, gave his testimony.

of
wned by
ewey.

Oct. 26, 1891, C. P. Dewey acquired 50 shares. See Certf. #52.
Oct. 31, he acquired 30 shares. See Certf. # 55.
Dec. 4, 1891, he acquired 40 shares. See Certf. $62.

Jan. 26, 1893, Certfs. #52 and 62 were endorsed to F. L. Jewett.

There is no endorsement on Certf. $55; but on March 10th 1892 C. P. Dewey surrendered Certfs' #55 for 30 shares, which was re-issued as follows:

Certf. $71 for 10 shares, to J. and G. Galbraith of Smithfield, Ohio, and 20 shares were reissued to C. P. Dewey; See Certf. #70.

April 21, 1892, Certf. #70 standing in the name of C. P. Dewey, for 20 shares, was surrendered and reissued as follows:

Certf. #77 for five shares to Charles McKinney; the remaining 15 shares were reissued to C. P. Dewey. See Certf. #76.

Feb. 6, 1893, C. P. Dewey surrendered the following certificates: #52 for 50 shares; 62 for 40 shares; 76 for 15 shares; which were reissued as follows: #84 for 95 shares to F. L. Jewett; #85 for 10 shares to C. P. Dewey.

Sept. 8, 1893, F. L. Jewett surrendered Certf. # 84 for 95 shares, which was reissued to C. P. Dewey. See Certf. #88. The assignment or the transfer on the back of the certificate bears date September 5, 1893.

May 7, 1894, C. P. Dewey surrendered certificate #88 for 95 shares which was reissued to F. L. Jewett. See certf. #95. The transfer on certf. #88 bears date May 4, 1894.

Jan. 3 1895 C. P. Dewey surrendered Certf. #85 for 10 shares, which was reissued to F. L. Jewett as follows:

#109 for 5 shares; #110 for 5 shares; The transfer of the certificate as endorsed on the back thereof by C. P. Dewey bears date August 31st, 1894.

December 13, 1894, F. L. Jewett surrendered certificate #95, endorsing the same in blank without date, for 95 shares, which was reissued to himself in the following certificates:

#96 for 5 shares; #97 for 5 shares; #98 for 5 shares; 99 for 10 shares; 100 for 10 shares; #101 for 10 shares; 102 for 10 shares; 103 for 20 shares; 104 for 20 shares;

December 26 1894 C. M. Hogg surrendered certificate #60 for 20 shares, which was reissued to F. L. Jewett; The endorsement of Hogg on the back of the certificate bears date December 20, 1894. See certificate #105.

Statemen stock C. P.

The following tabulated statement shows the different transfers made of the stock placed in the name of F. L. Jewett by C. P. Dewey and C. M. Hogg:

December 29, 1894, certificate #103 surrendered for 20 shares, standing in the name of F. L. Jewett, and reissued to Jules W. Jouvenat. The endorsement on the certificate bears date December 22nd, 1894.

February 21st, 1895, the following certificates, standing in the name of F. L. Jewett, were surrendered: #96 for 5 shares; #97 for 5 shares; #100 for 10 shares; #101 for 10 shares. The endorsement of Fred L. Jewett on the back of these four certificates bears date January 10, 1895, and the transferee was Charles H. Killough.

On the 6th of February, 1895, Charles H. Killough executed a transfer and assignment of said certificates, which was attached to them, to J. G. Hatcher, and on February 13, 1895, J. G. Hatcher transferred said certificates to C. C. Hatcher.

The stub of the certificate book indicates that on February 21st 1895 the following certificates were issued to C. C. Hatcher: #134 for 10 shares; #135 for 10 shares; #136 for 5 shares; #137 for 5 shares.

March 4, 1895, certificates #109 for 5 shares, #110 for 5 shares; standing in the name of F. L. Jewett, were surrendered and reissued as follows: #138 for 5 shares; #139 for 5 shares. The endorsement on the book of these certificates made by Fred L. Jewett bears date January 9, 1895.

December 18, 1894, F. L. Jewett assigned certificate #104 for 20 shares to L. Eberhart, who in turn on May 27th 1896 assigned it to A. C. Kendig, and on June 9th, 1896, certificate #148 was issued to A. C. Kendig.

January 3, 1895, certificate #106 for 20 shares, standing in the name of Jules W. Jouvenat, was surrendered, and reissued to Jules W. Jouvenat in the following certificates: #107 for 10 shares; #108 for 10 shares.

November 6, 1895, Jules W. Jouvenat surrendered certificate #108 for 10 shares, which was reissued to Eli K. Gaugar. See certf. #141.

November 2, 1895, Eli K. Gougar surrendered certificate #141 for 10 shares, which was reissued to William Mathewson. See Certf. #144.

January 23, 1896, William Mathewson surrendered certificate #144 for 10 shares, which was reissued as follows: #145 for 6 shares to Andrew K. Park; #146 for 4 shares to William Mathewson.

IN THE CIRCUIT COURT OF THE UNITED STATES,

Northern Division, Northern District

——— of Illinois. ———

John W. McDonald, Receiver of the First National Bank of Orleans, Nebraska,
Complainant.
—*vs*—
Charles P. Dewey, *et al.*
Respondants.
} Abstract of Testimony.

TESTIMONY OF COMPLAINANT.

of John onald.

JOHN W. McDONALD, being first duly sworn, deposes as follows: (see page 10 of testimony, taken before Miss Emma Hedges, Notary Public and Examiner in Chancery.)

My name is John W. McDonald, residence Lincoln Nebraska. I am in the loan and real estate business. I am receiver of the First National Bank; was appointed about
10 eighteen months ago, but cannot give the exact date. I have my commission in the office. My predecessor in office was P. O. Hedlund. The business of the receivership was practically closed up before I was appointed, with the exception of some suits pending. My receivership is a sort of inactive re-
11 ceivership. As receiver Mr. Hedlund turned over to me the receiver's books and a lot of the records of the bank. These books are in front of me. This book in my hand is stock certificates, and is marked "exhibit 1". Among other books turned over to me, was this book, marked "Stock Ledger" which is identified as "Exhibit 2". I have two fournals in my possession, one marked "X" and the other "O" which are identified
12 as Exhibits "3" and "4"; also general ledger #3, marked exhibit "5"; trial balances 3, 4 and 5, marked exhibits "6", "7", and "8"; trial balance book marked "1890", being exhibit "9"; remittance register exhibit "10"; Certificate Register exhibit "1"; book marked "Day Book", which was a sort of blotter, exhibit "12"; book marked "Articles of Association

and Minutes of Meeting", exhibit "13"; letter copy book with a lot of loose letters, in it, marked exhibit "14". I have in my custody other records, namely, two or three books, that are in the hands of Mr. Randall, formerly cashier of the bank. I think he has in his possession the Journal and two trial balances; also the book entitled "Loans and Discount". There was also a lot of letters and correspondence which I turned over to the attorney Mr. Lambertson.

14 I came to Lincoln in 1886 and have lived here continuously since then. I have always been in the loan business, loaning money on real estate, and I did a good deal of business in the Western part of the state; my Western business was pretty much in Hayes, Hitchcock and Frontier Counties, some in Red Willow, and then I did some business, but not a great deal, in Harlan and Gosper Counties and scattered all over that part of the country. I am pretty familiar with the conditions that existed in 1893 and '94, and '95, in that section of the country, including the place where this bank was located. The conditions were there very bad following the crop failure of 1894, not only in that section but all over the state of Nebraska, and were worse in the Western half of the state than in the older part, of course. The conditions were the culmination of a good many bad things, the more recent of which was the panic of 1893. There was rather a poor cropp that year, and then in 1894 the most disastrous failure of crops in the history of the state; really a famine crop in the West, so that values were practically destroyed; at least, that was my experience in my own affairs. I suppose I had about forty thousand dollars loaned in those western counties—almost all of it, though, further west than Harlan County. As to the collectibility of the loans in 1893 and 1894 I have to say that in

16 1894 they were—well, the defaults became almost universal in 1893. Going back over my record I find that the interest due after the Spring of 1893 was very little of it paid, and in 1894 there was practically nothing paid. I was compelled to foreclose on practically all of them, and we were compelled to bid them in. The values of lands and produce throughout the western section of the state had really almost disappeared. There was little value left to any kind of real estate, practically. The state was compelled to appropriate funds for the relief of the people; I think it was largely in the way of seed, however, though I am not sure about that; I don't know how it was dispended, and it is true that a large amount of relief

John Ald.

was sent from the East. The relief commenced in the Summer and Fall of 1894. I think an appropriation was made in the winter of 1894 and 1895.

17 I have seen the bank building in which the First National Bank of Orleans was located at Orleans. It is a very difficult matter to put a value on any kind of real estate in that part of the country for the years 1894 and 1895. I was going to say property hardly had any value at all, particularly town property. Farm property was bad enough, but town property really had no value. That was my experience. In a general way I would say I would know something about what it would sell for. I own a large amount of land—perhaps five or six thousand acres—perhaps more than that—and since 1892 there has been very little sale for land in the Western part of this state. In the last two or three years some has been sold. Well, in my judgment, the fair market value of the bank building and property say on December 1, 1894, would not have sold
18 for over $2500 or $3000, and I don't believe it would have sold for that at that time. I cant say that I know what was realized for the bank building from the sale at the receiver's sale. I could tell by looking at the records. I will look at the records and give you the amount. I have had some connection with banks during the last four or five years. I did some business for the Comptroller—that is, I was appointed National Bank Examiner about three years ago and made a number of examinations and did considerable work examining live banks and also a good deal of work examining insolvent banks, that is, banks in the hands of a receiver, with the idea of arriving at the value of the assets and whether the business was properly conducted or not. Then I was receiver of the Capital National Bank of Lincoln and of the German National Bank of Lincoln and of the First National Bank of Orleans. My work as a National Bank Examiner took me as far east as Boston and as far west as Salt Lake City, I believe. From Salt Lake City I examined banks in Boston, Philadelphia, Washington and Pittsburg, and then a great many insolvent banks in the west. I have looked into the affairs of this bank, say on December 1st, 1894, and my judgment of the value of the assets would largely be deduction and not from the
19 actual knowledge of the assets; that is, I speak particularly of the bills receivable. I looked over the bills receivable of the bank at different periods from December 1st, 1894, down to the failure of the bank. I found a great many of the bills

receivable in the bank at the date of its failure had been in the bank in 1894; and I have authorized Mr. Randall, formerly cashier of the bank, to go over these and make a list or statement of what paper was in the bank when it failed—what was in the bank say December 1st, 1894. In looking over the bills in the bank in the summer and fall of 1894 and sometime prior to that and running it down to the time the bank failed I find there are a great many notes just renewed from time to time and which remained in the bank during all that period, a matter of three or four years, and so I had Mr. Randall go over the books and make me a statement of the notes which were in the bank say along in the fall of 1894, which were there at the time the bank failed, and his statement, which I have not varified at all—I presume it is correct but know nothing about it—shows that in December, I suppose December 1st, 1894,—yes, the date is here, December 1st 1894—there were bills in the bank amounting to $49150.41, which were still there when the bank failed in May 1897, these same notes having grown to $57241.62, and it would indicate to me that these notes must have been pretty poor at that time. I suppose, but it would only be a supposition, that the increase would indicate that the interest had been added to the notes. In the absence of any specific knowledge as to whether a note is good, or bad, in the absence of any specific knowledge as to the maker of the note, the note can hardly be called bad; I dont see how it can be called bad until it is past due; but the fact that all these notes should have remained in the bank for three or four years without being reduced but on the contrary increased, indicates that they must have been pretty poor bills.

Cross-Examination.

Yes, most of my business was done in the counties west of Harlan County. I dont suppose I made over twenty or twenty-five loans in Harlan County. No, most of my loans were not made in Hitchcock Hayes and Dundy and Chase Counties. I made, I think, only two loans in Dundy County and perhaps only a dozen in Chase County. They were mostly made in Hayes and Hitchcock and a good many in Frontier and some in Gosper and then scattered all the way east of Harlan County, but as I say I think perhaps twenty loans would cover my loans in Harlan County. Of course for a good many years I bought almost the entire issue of Harlan County warrants so

John Ald.

that kept me in touch with things there. Yes, the bulk of my western business was west of the one hundredth meridian. Of course the large bulk of my business was in the eastern part of the state, but this was the western business I am speaking of. Yes, Harlan and Furnas, Franklin and Phelps Counties are better counties than Hitchcock and Chase and those west of the
22 hundredth meridian. The further east you go the better it is. My success in collecting loans in Hitchcock and Chase Counties west of the hundredth meridian was about the same as in Harlan County. The loans were larger in amount, but the foreclosures were just about the same.

As receiver of the Capital National Bank I received on the land sold in Harlan County from 8 to 10 dollars an acre. I think $9 would come nearer.

I am not personally acquainted with the financial standing of the parties who were owing the First National Bank of Orleans. My testimony has been given on the basis of conditions that resulted from drought in the year 1894 and I have no personal knowledge of the financial condition of the parties whose names are on the list prepared by Mr. Randall. I can say I had really no knowlege of the financial condition of the
24 makers of this paper in December 1st, 1894. I may have had a little knowledge of some of them later on when the bank failed.

No, I have not made an attempt to collect any of the paper of the bank, for the assets had all been disposed of and sold before my appointment. I have no personal knowledge as to whether this papers was secured and how it was secured if secured at all.

Re-direct Examination.

I do not think the property sold by me for the Capital National Bank in 1898 and 1899 could have been sold for as much by considerable in 1894. I think that was a pretty generally accepted fact, and that was due to the very great drought.

J. A. 25 J. A. RANDALL testified as follows: —see his depositions, p. 25, taken before Miss Emma Hedges, examiner and notary public.

My name is John A. Randall, business insurance. Have lived in Lincoln a little over three years. Prior to that time lived in

Orleans, Nebraska. Was cashier of the First National Bank. I know the defendants C. P. and A. B. Dewey. George W. Burton was president of the First National Bank of Orleans. The officers and directors in 1892, 1893, 1894, were George W. Burton, M. F. Burton, George Hoffman, Pat Gibbons, A. B. Dewey and C. M. Hogg and myself. There were eight. I dont know whether that makes eight or not. Mr. Claypool was director one year and J. O. Park one year. The above named were the directors. George W. Burton was president during all that time. C. P. Dewey was vice-president of the bank. I think he was vice-president from the time he acquired his stock to the time he sold it. I am not sure that he was made vice-president at the time he acquired his stock, but he was made vice-president a couple of months later. I was cashier from January 1890 to July 1st, 1895. There was $1,000 of stock
26 in my name and the certificate of stock was in my possession. When I first went there I took the place of a party who was director and Mr. Burton wanted to keep the stock as it was He had me give him a note for $1,000 and put the stock in my name and I took the place of a Mr. Sitler who was there before me. No, that $1,000 was afterwards put in the bank by Mr. Burton. Prior to the time I became cashier I was for two months on the board of directors. I went to Orleans November 1889 and was employed by Burton & Harvey prior to that time. The first three years that I was in the bank my time was nearly all taken up with Burton & Harvey's business except the books; I kept the books of the bank. The business of Burton & Harvey was a farm loan business and was quite extensive. There was a banking firm prior to the organization of the First National Bank called the Harlan County Bank. I cannot say personally who owned and operated it. It was supposed, of course, to belong to Burton & Harvey and did, I guess; that is, it was owned by George W. Burton, Harvey, and M. F. Burton, who was a sister of George W. Burton. She was assistant cashier. All of the directors lived in and around Orleans except A. B. Dewey and C. M. Hogg. Mr. Hogg resided at Cadiz, Ohio.

Q. I hand you now what purports to be the stubs of certificates of stock of the bank, and also stock ledger. I will ask you to trace the stock, from the ledger and from that book, of C. P. Dewey from the time he acquired it until it finally passed
28 out of his hands. A. I find certificate #52 attached to the stub and records of the bank. It is signed by George W. Burton as president and by me as cashier. The signature is genuine and the handwriting in the certificate and stub is mine. I made

of J. A.

out the certificate and delivered it, I suppose, to Mr. Dewey sent it to him. That is my memory. The signature on the b of the certificate looks very much like C. P. Dewey's. I hav seen his signature for a good while, but in my opinion tha his signature. I have frequently received letters from him have occasionally seen him write his name. —A copy of certificate is offered in evidence, marked exhibit "15."

Turning to the stock ledger of the bank, page 15, I find t the certificate is entered in the name of C. P. Dewey.

Page 15 of the stock ledger is offered in evidence, mar exhibit "16".

I kept it from the time I went there, and the handwriting mine.

I have here certificate Number 55 issued to C. P. Dewey thirty shares, signed by George W. Burton as President by me as Cashier. I wrote the writing in the body of the cert cate and on the stub.

33 Plaintiff offered in evidence Certificate No. 55 and st which was marked exhibit "17".

The stock ledger shows that said certificate was issued to C. P. Dewey.

I find certificate No. 62 for forty shares issued to Char P. Dewey, signed by Mr. Burton as President. The handw ing in the body of the certificate and the stub is mine. T transfer on the certificate endorsed on the back is the signatu of C. P. Dewey.

Certificate No. 62 and stub is offered in evidence mark
36 exhibit "18."

This makes up all the stock held by Mr. C. P. Dewey at a one time, twelve thousand dollars. I think C. P. and A. Dewey each own twelve thousand.

Certificate Number 71 is not here; but the stub is. The han writing of the stub is mine. That indicates that there was certificate for ten shares issued to J. and C. Galbraith. I fi that certificate #55 was cancelled March 10th, 1892, and that same date certificate number 70 for twenty shares was sued to C. P. Dewey and seventy-one for ten shares was issu
38 J. and C. Galbraith. Certificate number 70 is signed by M Burton as President and me as Cashier, and the handwriti in the body of the certificate and the stub is mine. Said c tificate stub is marked exhibit "20". I think if you turn to c tificate number 76 you will find that number 76 on April 21 1892, was issued to C. P. Dewey for fifteen shares and that that time certificate number 70 was surrendered. April 21 1892 certificate number 70 was cancelled and reissued in nu

ber 76, in the name of C. P. Dewey, and certificate number 77
40 on the same date to Charles McKinny. Certificate number 76 bears the signature of Mr. Burton as President and mine as cashier. The handwriting in the certificate I suppose is mine. Mr. C. P. Dewey's signature is endorsed on the back of the certificate.

45 Certificate number 76 is introduced in evidence as Exhibit "21"; also stub as exhibit "2".

Febuary 6th 1893 I find that certificates number 52 for fifty shares, number 62 for forty shares, number 76 for fifteen shares, were surrendered. On the same date certificate number 85 for ten shares was issued to C. P. Dewey. There were altogether one hundred and five shares. Ten shares were reissued. That is, certificate number 85. Certificate number 84 on the same date was issued to F. L. Jewett February 6th 1893 for ninety-five shares.

Certificate number 84 and 85 were signed by Mr. Burton as President and by me as Cashier. I worte the body of the certificates and the stubs. I dont know the signature endorsed on the back of the certificates. The signature appears to be F. L. Jewett's but I dont know it. Mr. C. P. Dewey's signature is attached to the endorsement on the back of certificate number 85. Certificates and stubs number 84 and 85, being exhibits "23" and "24", are introduced in evidence. I find that on September 8th, 1893, certificate number 85 for 95 shares was issued in the name of C. P. Dewey; the signature is that of Mr. Burton as President and mine as Cashier. I wrote the body of the certificate and the stub and the back of the certificate bears the endorsement of C. P. Dewey.

49 Certificate No. 88 and stub introduced in evidence as "Exhibit 25".

I find that on May, 1894, this same certificate No. 88 was surrendered and that on the same day certificate number 95 for ninety-five shares was issued to Fred L. Jewett and the signature of Mr. Burton as President and mine as Cashier is attached. The handwriting of the stub and the cerdtificate is mine. I am not acquainted with the handwriting of F. L. Jewett whose name is endorsed on the back. At that time Mr. C. P. Dewey had disposed of all of his stock except ten shares,
53 which was disposed of January 3rd, 1895. But ten shares, I suppose, was charged off on his account. It was issued February 6th. The certificate bears the signature of Burton as President and mine as Cashier. The handwriting of the stub and the certificate is mine. Mr. C. P. Dewey's signature is attached to the endorsement on the back of the certificate.

of J. A.

December 13th, 1894, certificate number 95 was surrend
and certificate number 96 for five shares; 97 for five sh
98 for five shares; 99 for ten shares; 100 for ten shares;
for ten shares; 102 for ten shares; 103 for twenty shares;
for twenty shares; were issued to Fred L. Jewett. Som
the certificates are not here and all that are here are signe
Mr. Burton as President and myself as Cashier, and the s
and certificates were written by myself. I dont know who w
the endorsements on the certificates. —Said certificates ar
troduced in evidence as exhibits 27, 28, 29, 30, 31, 32,
and 35. Certificates number 98, 99, and 102 are not here

December 29 1894 certificate number 103 was surrend
64 and reissued to Jules W. Jouvenat in certificate No. 106
twenty shares.

February 21, 1895, certificates number 96, 97, 100, and
for thirty shares were surrendered and reissued to C.
Hatcher and certificate number 134, for ten shares, 135 for
shares, 136 for five shares, 137 for five shares, and March
1895, certificates number 109 and 110 for five shares each, w
surrendered and reissued to Emmile Jouvenat in certific
Number 138 and 139.

December 18 certificate number 104 was surrendered
twenty shares and re-issued in certificate number 148 to A
Kindig.

That leaves certificates number 98 for five shares, num
99 for five shares and number 102 for five shares still in
name that I dont think have ever been surrendered. There i
record of these three having ever been surrendered on the b
of the bank. They represent number 98, five shares, num
99 ten shares; number 102 ten shares; twenty five hund
dollars, which stand on the books of the bank in Mr. Jewe
name.

Q. I will ask you to look at certificates number 109
110 and see in whose name there were issued. A. It
issued in the name of Fred L. Jewett January 3rd 18
They were surrendered March 5th 1895. Certificates num
109 and 110 were issued to Emile Jouvenat.

Complainant introduces in evidence certificate 109 for
66 shares, certificates 110 for five shares, standing in the na
of Jewett, which were reissued to Emmile Jouvenat; cer
cates 138, 139, for five shares each; also certificate 148
A. C. Kindig for twenty shares, as exhibits 36, 37, 38,
and 40.

Complainant introduces in evidence stock certificates

stubs No. 106, for twenty shares; 107 for ten shares; 108 for ten shares; 141 for ten shares; 144 for ten shares; 145 for six shares; 146 for four shares; 134 for ten shares; 135 for ten shares; 136 for five shares; 137 for five shares; Marked exhibits 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51.

Complainant offers in evidence from stock ledger page 15, showing the transfers made from time to time by C. P. Dewey as exhibit 16; also page 27 showing the transfers of F. L. Jewett, page 30 showing the transfers of J. W. Jouvenat, page 34 showing the stock account E. Jouvenat; page 33 showing the stock account of C. C. Hatcher, page 35, showing the stock account of Eli K. Gougar; page 39 showing the stock account of L. Eberhardt; page 40, stock account of A. C. Kindig. See stock ledger marked for reference exhibit 2; copies of said stock accounts marked exhibits 52, 53, 54, 55, 56, 57, and 58.

84 I am quite sure that certificates number 96, 97, and 100 which purport to have been assigned to Charles H. Killough were never transferred on the books of the bank to him and no certificate of stock was issued to him.

The following is a copy of the form of the stock certificates and stubs referred to above.

Stub.

T h e

FIRST NATIONAL BANK

Orleans, Neb.

Certificate No. .....
Shares .....
Issued to .....
.....
Dated ..... 189....
Received this Certificate .....
.....
Transferred to .....
.....
..... 189....

J. A.

Certificate.

No. .... Shares.

AUTHORIZED CAPITAL $100,000.00.

FIRST NATIONAL BANK.

OF

Orleans, Nebraska.

This Is To Certify, That ..... is entitled to ..... Shares of One hundred dollars each, of the Capital Stock of the First National Bank, of Orleans, Neb., subject to the provisions of the National Banking Act, approved June 30, A. D. 1864, and amendments thereto.

Transferable only on the books of the Bank, in person or by Attorney, on the surrender of this Certificate.

In Witness Whereof, The President and Casnier have hereunto affixed their signatures under the Corporate Seal of this Bank, this ..... day of ..... 189....

.....

President.

.....

Cashier.

On the back of each certificate is the following:

For Value Received I hereby sell, assign and transfer unto ....., ... Shares of the Capital Stock repsented by the within Certificate, and do hereby irrevocably constitute and appoint ..... Attorney to transfer the said stock on the books of the Bank, with full power of substitution in the premises.

.....

Dated this ..... day of ..... 18....

In Presence of

.....

The following are copies of the various exhibits attached to the testimony of John A. Randall, showing the various transfers of stock held by C. P. Dewey on the books of the bank.

EXHIBIT 16.

Exhibit and fers

C. P. Dewey, Chicago, Ills.

1892.						1891.					
Mar.	10,	Ctf.	No.	55,	3000	Oct	26	Ctf.	No.	52	5000
Apr	21	"	"	70	2000	"	31	"	"	55	3000
1893.											
Feb.	6,	"	"	52	5000	Dec	4	"	"	62	4000
"	"	"	"	62	4000	1892					
"	"	"	"	76	1500	Mar	10,	"	"	70	2000
1894						Apr.	21,	"	"	76	1500
May	8	"	"	88	9500	1893					
1895						Feb.	6,	"	"	85	1000
Jan	3	"	"	85	1000	Sept	8	"	"	87	9500

EXHIBIT 52.

1893.						1893.	F. L. Jewett.				
Sept	8	Ctf.	No.	84,	9500	Feb	6	Ctf	No	84	9500
1894.						1894					
Dec.	13,	"	"	95,	9500	May	8	"	"	95	9500
	29	"	Jouvenat	103,	2000	Dec	13	"	"	96	500
1895								"	"	97	500
Feb.	21	"	H. No.	96,	500			"	"	98	500
	21	"	"	97,	500			"	"	99	1000
	"	"	"	100	1000			"	"	100	1000
	"	"	"	101,	1000			"	"	101	1000
Mch	4	"	"	109	500			"	"	102	1000
	"	"	"	110	500			"	"	103	2000
1895								"	"	104	2000
Dec.	18	"	"	104	2000		26	"	"	105	2000
						Jan	3,	"	"	109	500
										110	500

EXHIBIT 53.

Jules W. Jouvenat, Chicago.

1895						1894					
Jan	3,	Ctf		106	2000	Dec	29	Ctf		106	2000
Nov	6			108	1000	Jan	3,	"		107	1000
							"	"		108	1000

55

EXHIBIT 54.

Emmile Jouvenat.
Rooms 45-6 & 7 84 Washington St.,
Chicago.

May	4	Ctf.	138	500
			139	500

EXHIBIT 55.

C. C. Hatcher.
234 S. Grove Ave Oak Park Ill.

Feb	21	Ctf	134	1000
"	"		135	1000
"	"		136	500
"	"		137	500

EXHIBIT 56.

Eli R. Gauger,
41 S. Central St., Chicago.

1895					1895				
Dec	2	Ctf	141	1000	Nov	15	Ctf	141	1000

EXHIBIT 57.

L. Eberhart.
Room 107 Dearborn St. Chicago.

1894					1896				
Dec	18	Ctf	No 104	2000	Jan	9	Ctf	No. 104	2000
1896					A. C. Kendig				
June	9	Ctf	No 148	2000					

92 The signature to the letter of November 9th, 1891, directed to George W. Burton is that of C. P. and A. B. Dewey. I am under the impression that it is in C. P. Dewey's handwriting. That is my opinion.

Letter introduced in evidence as exhibit 59.

Copy of Letter. Exhibit 5 Letter 9, 1891

93 Office of
C. P. & A. B. Dewey,
404 & 402 Chamber of Commerce Bldg.
S. E. Cor. La Salle and Washington Streets.

Chicago, Nov. 9, 1891.

Mr. Geo. W. Burton, Pres.,
Orleans, Neb.

Dear Sir:—

We have paid and herewith enclose the following notes viz:
Note of Burton & Harvey to Georgetown Nat'l Bank. $2,500.
Note of Do. to People's Trust Co. Farmington, Me 1,500
Note of Do to R. H. Porter, Cashr., Keene N. H. 1,000
Note to Do to Do Do 500.

We also send you heerwith per Express, the tax sale Ctf's that were left with the Peoples Trust Co. of Farmington, as collateral for above note, which we have just this moment received from them.

We enclose herewith a statement of the amounts we have paid, and charged to Burton & Harvey (on acc't of the $26,000. of your Bank stock we have purchased from them) amounting to $15,731.37
& enclose our Chicago Df't for balance a/c Bk Stock $10,268.63

$26,000.

The sum of $10.268.63 is to be applied towards the liquidation of the individual notes given your Bank by
George W. Burton for $4995.
A. E. Harvey 4975.
and also the second mortg. notes discounted by the Bank for Burton & Harvey, in accordance with agreement made by you with us, on Oct. 23, 1891.

We have received from Burton & Harvey the following Stock C't'f's of the First Nat. Bank, Orleans, Neb. viz:
C'tf #52 in name of C. P. Dewey for 50 shares $5000.
C'tf. #55 in name of Do for 30 shares 3000.
C'tf. #53 in name of A. B. Dewey for 50 shares 5000.
C'tf. #56 in name of Do for 30 shares 3000.

We have received the following Stock C't'f's. which had been left as collateral for Burton & Harveys notes viz:

From R. H. Porter, Keene N. H. Ctf. #49 in name of A. E. Harvey $2000.

of Nov.

From R. H. Porter, Keene N. H. Ctf. #50 in name of Geo. W. Burton $3000.

From Peoples Trust Co Farmington Me. Ctf. #43 in name of Geo. W. Burton $3500

From Georgetown Nat. Bank Ctf. #44 in name of Geo. W. Burton $3500

We send you herewith Ctf. #49 for 20 shares in name of A. E. Harvey for $2000. This will leave in our hands 100 shares of stock ($10,000.) for which we will have you issue new ct'fs later on, when we decide in whose names we will have them issued. Please acknowledge receipt of enclosed.

Yours truly,

C. P. & A. B. DEWEY.

of Feb.

The letter of February 4, 1893, handed me I am reasonably sure has the signature of C. P. Dewey attached to it.

Letter introduced in evidence as exhibit 60.

"Office of

94 C. P. Dewey & Co.

401 & 402 Chamber of Commerce Bldg.,

S. E. Cor. La Salle & Washington Sts.

Chicago, Feby 4 1893.

Mr. J. A. Randall, Cashier,

Orleans Neb.

Dear Sir:—

I enclose herewith stock Ctfs of 1st Nat. Bank Orleans Nebraska, as follows viz:—

#52 for 50 shares
62 for 40 shares
76 for 15 shares

Total 105 shares

Please transfer to F. L. Jewett a 95 shares and C. P. Dewey 10 shares and return the new Ctfs to me and oblige.

Yours truly,

C. P. DEWEY.

The letter of March 9th, 1893, signed "C. P. and A. B. Dewey," bears, I think, the signature of C. P. Dewey. Exhibit Letter 9, 189

Letter offered in evidence as exhibit 61.

Office of
C. P. Dewey & Co.
401 & 402 Chamber of Commerce Bldg.
S E Cor La Salle & Washington Sts.

Chicago, Mch 9th 1893

Mr Geo. W. Burton
Orleans, Nebr.

Dear Sir:

Your several favors have been received, enclosing new deed to your California Real Estate. We herewith return you the old deed, that you may destroy it.

Please do not forget to make new deed for the Bank lot, if you have not already done so.

You say that you have temporarily credited Burton & Harvey on the Bank book, with $543.75 being one of C E Osborn's loans paid off.

Instead of mixing these matters up with B & H collection account, would it not be best to credit C E Osborn direct, on the Bank books? This suggestion will apply to other cases of the same kind. We have requested Mr. Randall to send us a Bank statement every 2 weeks, which he has done. We notice in the last statement for January and February, that the Expense a/c amounts to $461, and we have asked Mr Randall for an explanation, which he has given us, and after paying the usual salaries, insurance and some other little items, we find a considerable item of Lawyers fees and other costs, paid out in connection with those old claims of Burton & Harvey's, that were placed in the Bank. Now it certainly would not be right to make the stockholders of the Bank bear the burden of the cost of collecting these old claims, any more than they would bear the burden of the claims themselves and certainly we as the majority stockholders, do not intend to have the Bank run in that way. You must keep in mind that the First Nat Bank of Orleans is not Burton & Harvey any more, and the business of each, must be conducted separate and apart, and not as one firm, as it has in the past. These old claims, that were entirely worthless, were agreed by you to be taken care of, and to be taken out of the Bank as soon as possible, and this we will expect you to do, and until then, whenever there is any expense

attending the collection of them, it must be charged to B & H. and not left for the Bank to pay.

Your mailing clerk is very careless about sealing your letters properly, which we have called your attention to before. We enclose herewith sample envelope, which is similar to many others received.

Very truly,
C P & A B Dewey.

May 4. The letter handed me of May 4th, 1894, signed by C. P. and A. B. Dewey, bears I think Mr. C. P. Dewey's genuine signature.

This letter introduced in evidence as exhibit 77.

"Office of
C P & A B Dewey
401 & 402 Chamber of Commerce Bldg.,
121 S E Cor La Salle and Washington Streets.

Chicago, May 4 1894.

Mr Geo W. Burton
Orleans Neb

Dear Sir: Yours of the 30th ult. is rece'd enclosing one from R E Moore to the effect that he had received orders to foreclose the $350. Nicholas Mayer Mtg. on S E 4-4-33 Rawlins Co Kans. unless the interest from Dec 10/92 and back taxes are fully paid up. You also enclose a letter from John Jefferies & Sons Boston that they desire the H. A. Gray $600. loan on S E 1/4 15-3-25 Furnas Co. Neb. paid off. You say the interest has been paid on this loan to Oct 1/93 and also the taxes.

Unless we should have a quit claim deed from you for these lands we certainly would not be willing to pay out any money on a/c of same. After having advanced about $50000. to help Burton & Harvey alone, and then to have them show that they had greater confidence in strangers than they have in us, we do not feel that we can make any further advances of money for the protection of their interests, until they show a greater degree of confidence in us, than they have in the past. By writing to Mr. Moore, and to Jeffries & Son that there is a probability of your being able to pay up the overdue interest this Fall through a sale of the land, you may be able to induce them to hold off their foreclosure proceedings. Any lands that we might sell, we would naturally apply the proceeds of such sale

towards the liquidation of Burton & Harveys indebtedness to ourselves or the Bank, which is all that you could ask or expect: but you seem unwilling to trust us. It is certainly not our wish or desire to pay off any more claims on lands for your benefit, and not be permitted to handle those lands differently from any other mortgagee. If we especially desired to own the land, we could just bid them in under foreclosure sale. Exhi Le 18

But this is not the case as we already own more lands than we care to carry.

Now if you care to have the equity in these lands saved, you must send us quit claim deeds to them, with the distinct understanding that Burton & Harveys interest in same does not further exist, and then trust us to apply proceeds of sales, to whatever a/c, our judgment might dictate. If you have any better plan to adopt, then you are at liberty to carry it out on your own a/c. After having placed confidence (lacking any thought of suspicion) in Burton & Harvey, to the extent of $50,000. it ill becomes them to show signs of suspicion towards our mode of doing business with them. If you can find any more substantial friends than we have proven, we would be glad to have them relieve us of the burden we have taken upon our selves on your account.

Yours truly,

C P & A B Dewey

98 The letter of July 20, 1894, is I am sure in the handwriting of A. B. Dewey. Exh Le 20

Letter introduced in evidence as exhibit "63".

"Office of
C P & A B Dewey,
401 & 402 Chamber of Commerce Bldg.
S E Cor La Salle and Washington Streets.

99 Chicago, July 20 1894

Mr Geo W Burton,
Orleans Neb

Dear Sir: Money has become very plentiful and cheap in most all banks over the country, and we think that you could make loans of $2000 to $3000 in any one of them by offering to give them an equal amount of your bank stock as collateral security. We are very anxious to have you pay off the loans now due us as we need all the funds we can raise to go into a new enterprise we have on hand. If you can pay off our loans within a short time, we will make it to your interest to do so,

by reducing the rate of percentage the notes now bear. I writing personal letters to the different Banks with which y have done business, besides some in the locality of Cadiz we think you would have no trouble in raising the amount ne essary to pay us off, and get from them a pretty low rate of i terest. You could refer to C M Hogg State Senator, and form president of Farmers and Mechanics Nat'l Bank of Cadiz and now a director of same bank; also mention the names McKinney and Galbraith's, Smithfield Ohio, and state also th we are large stock-holders in the Bank. Before sending yo letters off to the Ohio Banks, write us so that we can notif Mr. Hogg that you are going to refer to him.

Yours truly,

C P & A B Dewey

It would be a good idea to have some of the Banks stat ments printed on cards and sent to the Banks you apply to f loans.

100 The letter of September 5th, 1893, I think is signed by C. Dewey.

Letter introduced in evidence as exhibit 64.

"Office of
C P Dewey & Co
401 & 402 Chamber of Commerce Bldg
101 "S E Cor La Salle & Washington Sts.

Chicago Sept 5 1893

Mr J A Randall, Cash
Orleans Neb

Dear Sir: I enclose herewith, Ctf #84 for 95 shares Capital stock of 1st Nat Bank of Orleans Neb in the name F L Jewett, which please have transferred to me, and sen Ctf for same. I also send herewith all of the collateral notes sent me some days ago, to secure a $5000 for the Bank.

It will be more convenient for you, to have these notes there but at the same time, you can hold them for the payment an security of the above named note. I will send all of the e closed by the Express.

Very truly,

C P Dewey"

The letter of December 22, 1893, supposed to be signed by C. P. and A. B. Dewey, is, I think, in the handwriting of C. P. Dewey. Exh. 22

Letter introduced in evidence as exhibit 65.

"Office of
102 C P & A B Dewey
401 & 402 Chamber of Commerce Bldg.
S E Cor La Salle and Washington Streets

Chicago Dec 22 1893

To Geo W. Burton Prest
Orleans Neb

Dear Sir: Mr Hogg, together with ourselves, have concluded that it is for the best interest of the Bank, to pass the next dividend, and carrry over the earnings to the surplus, and undivided profits account, which will tend to strengthen the Bank. We think it would be well for you, or Mr Randall, to have a talk with Dr Hoffman and Pat Gibbons, and explain the situation, and reasons for so doing, and when you tell them, that we fully recommend it, for the purpose of strengthening the Bank we think they will be satisfied. The quitclaim deed to Ostrander was sent you a few days ago. The delay was caused by the absence of Mrs Dewey and not being here to sign it.

We have written a long letter of instructions to Mr Harvey about the Garner matter, and to fully inform you in regard to it, we have requested him to forward it to you, which will avoid the necessity of writing another long letter to you. Sometime ago, you wrote that the Nebraska Loan Co would release this tract sold Garner, for $4000. Would they do this, and take 1st mortgage notes on the land, for the amount of say $3000.

Yours truly

C P & A B Dewey."

103 The letter of January 16th 1894 purporting to be signed by C. P. and A. B. Dewey is in the handwriting of A. B. Dewey. Exh. 16

Letter introduced in evidence as exhibit 66.

"Office of
C P & A B Dewey
401 & 402 Chamber of Commerce Bldg.
S E Cor La Salle & Washington Sts.

Chicago Jany 16 1894

Mr Geo W. Burton Prest
104 Orleans Neb

Dear Sir: Yours of the 12th inst is rec'd in regard to the

Dawson property at Alma covered by balance of first mtg to "Cheshire prov trust" Keene N H of $477.81; and a second mtg to your Bank of $431.57 which mtgs you say have been foreclosed, and made ready for sale at any time. You ask if it would not be best for the Bank to get an assignment of the tax sale Ctfs, on the property, which would amount, with interest, to $130 or $135. We knew nothing about this Dawson second mtg matter, but always find that the Banks claims are always second to somebodys else, and it necessitates the putting up of more money to protect what little we already have in it. If the property does not sell for enough to pay off all claims, then the Bank will have to bid in the property to protect itself. If it has value, without doubt, of $1500, as you say, then the Bank had better get an assignment of the tax Ctfs. It (the Bank) is already loaded up with stuff not producing revenue, besides Real Estate far beyond what the law allows, we fear the comptroller will make a fuss about it. Better buy tax Ctfs if the equity in this property will warrant it.

Yours truly

C P & A B Dewey

The letter of January 20 1894 purporting to be signed by C. P. and A. B. Dewey is, I think, in the handwriting of A. B. Dewey.

Letter introduced in evidence as exhibit 67.

"Office of C. P. & A B Dewey
401 & 402 Chamber of Commerce Bldg.
S E Cor La Salle & Washington Sts.

Chicago Jany 20 1894

Mr Jno A Randall Cashier
106 Orleans Neb

Dear Sir: You must have had a report on the two Banks at Lincoln whose stock B. D. Mills gave you as collateral. Please send copy of same to us. Please make it your especial duty to have Mills, and other large borrowers to pay off their loans or at least to reduce them one-half without further delay. The longer the notes run, the more danger there is in not getting the money. You can say to them that we demand payment, and will bring suit on the notes unless there is a large payment made. It was a mistake of the Bank to make these large loans. Our policy would be to have ten individual loans of $100 each rather than to have one of $1,000, as you would have 10 persons to 1, working towards the payment of it. Should Pat Gibbon

desire to surrender his stock, and demand the note in Bank he gave for it, you will please refer the matter to us before you take any action.

Yours truly,

C P & A B Dewey"

The letter of January 30, 1894, signed with the names C. P. and A. B. Dewey, is, I think, in the handwriting of A. B. Dewey. Exhibit Letter 30, 18

Letter introduced in evidence as exhibit 68.

"Office of
C P & A B Dewey
401 & 402 Chamber of Commerce
S E Cor La Salle & Washington Sts,

Chicago, Jany 30 1894

Mr Geo W Burton
107 Orleans Neb

Dear Sir: Yours of the 28th inst is rec'd enclosing a letter from R E Moore at Lincoln stating that C H Smith Jr demands a payment of $600 on a/c of the second mtg's sold and guaranteed to him by Burton & Harvey. You suggest that the $300 received on a/c of the "Garner sale", and the $500 from the sale of the "California Lots" be used towards the settlement of Smith's claim, and also pay the back interest ($165.00) on the Evans drug store building, and $100 for Insurance on said Bdg. In reply would say that we do not want any of these funds, nor any standing to the credit of Burton & Harvey, on the Banks books to be used for the purposes you suggest: but do want them, and all future moneys received by you, to be applied to the indebtedness of Burton & Harvey to the "First Nat'l Bank of Orleans Neb", and also in payment of the indebtedness to us. You can write Mr Moore that you are going East at once, and will arrange matters with Mr Smith while there, for an extension of time.

Please do not pay out funds to any one, except the Bank, without first having consulted us. When you go East, please do not fail to stop off and see us, and we can talk these matters over, besides suggest something for your interest down East. We return Moore's letter herewith.

Yours truly,

C P & A B Dewey

Letter of April 16th, 1894, bearing the signature of C. P. and A. B. Dewey, is in the handwriting I think of A. B. Dewey.

Letter introduced in evidence as exhibit 69.

"Office of
C. P. & A. B. Dewey,
401 & 402 Chamber of Commerce Bldg.
S. E. Cor La Salle and Washington Streets.

108 Chicago, Apr. 16th 1894

Mr. Geo W. Burton.
Orleans Neb.

Dear Sir: Yours of the 13th inst. is rec'd enclosing copy of a letter from Bostwick & Nixon, Omaha Neb. stating that they have a party who wishes to buy Stock in Bank, and become personally connected therewith. We think it would be advisable for you to work up a sale of this stock, and the proceeds could be applied in taking up an equal amount of Burton & Harvey's indebtedness and guaranteed paper to the Bank, which would very materially reduce their interest payments, and put all concerned in pretty fair shape.

You could arrange to offer the purchaser the Presidency without salary for the first year or until he would become familiar with the Banks affairs, as well as its customers, and you could then take the Mice Presidency, leaving Mr. Randall as Cashier to look after the details of the Bank with which he is most familiar.

Possibly the purchaser might be satisfied with the Vice Presidency, with a promise of the first position after a year or two.

In either position you have just as high a standing so far as it goes to bolster up your credit before the public. Your first and main object should be to make the sale of Stock so as to cut down your indebtedness.

If the purchaser should, through himself or his friends, be able to purchase the Stock we hold, together with that of our friends, we will arrange to sell it to him on favorable terms.

Yours truly,
C P & A B Dewey

P. S. What price should be put on the 49 acres So of the Rover, which you now find to measure out 85 acres. The title to this tract is all clear, is it not?

he letter of April 13, 1894, bearing the signatures of "C. P. . B. Dewey" Is I think written by A. B. Dewey. Exhibit Letter 13, 18
etter introduced in evidence as exhibit 70.

fice of
' & A B Dewey,
& 402 Chamber of Commerce Bldg.
Cor La Salle and Washington Streets.

Chicago, Apr. 13, 1894.

Geo W Burton
Orleans Nebr

Dear Sir: Yours of the 10th inst rec'd stating that Stephen rgan is desirous of trading his farm on Flag Creek, and also Furniture Store Building and lot in Orleans, for our 320 s in section 15 on which the dwelling house stands. In y would say that we do not care to make any trade, es- ally where we have to take improved town property in part ment.

Ve return herewith the Comptrollers letter that you sent and which you say you answered.

Yours truly,

C P & A B Dewey"

he letter of March 28, 1894, purporting to be signed by P. and A. B. Dewey is evidently signed by C. P. Dewey. Exhibit Lette 28, 1
etter introduced in evidence as exhibit 71.

fice of
' & A B Dewey,
& 402 Chamber of Commerce Bldg.
Cor La Salle and Washington Streets.

Chicago Mch 28" 1894

Geo W Burton Prest
Orleans Neb

Dear Sir: We have just received a communication from Comptroller of the Currency stating that on the 23rd inst nailed your bank an important letter, and he requests us ead it. Will you please forward it or send us a copy?

Yours truly,

C P & A B Dewey

March 111 The letter of March 14, 1894, bearing the signatures of C P and A B Dewey is, I think, in the handwriting of C. P. Dewey. Letter introduced in evidence as exhibit 72.

"Office of
C P & A B Dewey,
401 & 402 Chamber of Commerce Bldg.
S E Cor La Salle and Washington Streets.

Chicago, Mch 14 1894

Mr J A Randall Cash
1st Nat Bank, Orleans Neb

Dear Sir: We enclose herewith contracts in duplicate, executed by C. P. Dewey to Joshua W Wallace, for the land lying East of R. R right of way, in S E ¼ 16-2-19 Harlan Co Con-
113 sideration $4000. Please notify E P Young of your place, and have Mr Wallace execute the contracts, and also the 10 notes of $360 each, herewith enclosed. Collect from him $400 and pay Mr Young $100 for his commission, and send us a Dft for $300 together with the original contract, and all the notes and deliver to Mr Wallace the duplicate contract.

Please tell Mr Burton when you receive these papers, and ask him to send us a quit claim deed for this land, at once, if he has not already done so. We notice that the advertisement of the Bank still appears in the Cadiz papers. Have you requested them to take it out and send you a bill for payment? We would like you to send us your last published statement and oblige.

Yours truly,
C P & A B Dewey

The letter written February 5, 1894, bearing the names "C P & A B Dewey" is I think in the handwriting of C. P. Dewey. Letter introduced in evidence as exhibit 73.

"Chicago Feby 5 1894

Mr J A Randall Cashier
Orleans Neb

115 Dear Sir: Your favor of the 2nd inst received, enclosing statements of the two Lincoln Banks, whose stock you hold as collateral for Mill's note. These Banks do not seem to be particularly strong, and perhaps if their true condition was ascertained, they might be worse than their statements show.

However, you must press Mr Mills, and insist on him paying his loans off. renew them for only 30 days at a time, and make him pay $500 to $1000 each time they are renewed. Do the same with all the others large borrowers of the Bank, and

press them to pay. It becomes necessary for you to do this, as between now and Spring, you will be called on probably, for all of the Cadiz deposits, and you will have to raise the money for them. When there last, you spoke of Pat Gibbons having settled his case with the Wabash R R Co for $300, and that it would be paid in 30 days. Has he received it yet? When he does, you must have him apply it on his indebtedness. We return the Bank statements. Also enclose Wm Bissell's letter for Mr Burton. Exhi Le 5.

Very truly
C P & A B DEWEY."

The letter of March 15th, 1894, bearing the names "C P & Exih Le 15
114 A B Dewey" is probably written by A. B. Dewey.

Letter introduced in evidence as exhibit 74.

"Chicago Mch 15 1894

Mr Geo W Burton Pres't
Orleans Neb

Dear Sir: Yours of the 13th inst is rec'd enclosing Q C deed from yourself and wife for the 120 acres near Orleans Neb sold to Joshua W Wallace, for which we sent you contracts to close up the sale.

You state that Mr Harvey has compromised the sale to Garner, by the latter forfeiting his $300, one half of which ($150.00) was paid to Caywood in settlement of his commission, and the other half ($150.00) remitted to your Bank for credit on their books, on a/c of the Burton & Harvey indebtedness. You will please forward to us, the three sets of contracts that we sent, to enable you to close up the Garner sale, and we will return you the quit claim deed you sent us for this Garner Sale.

Referring to our conversation with you, when here, regarding a/c to which all funds shall be placed, that may be received through dales of Burtons & Harveys lands, tax sale Ctfs second mtgs, and other property, left by them as security for their indebtedness to the First Nat'l Bank Orleans, and ourselves, we would suggest that said a/c be kept in the name of C P & A B Dewey trustees if Burton & Harvey, and as the money accumulates, to be applied on their indebtedness to the Bank and ourselves from that a/c, and to be used for no other purpose. Please request Mr Randall to open up such an a/c on the Bank's books, and carry to it such credits as rightfully belong to it. Please also have Mr. Randall make up, and send us a statement of funds received on a/c of land sales etc which have thus far

been credited on the Bank books to the Burton & Harvey a/c, and have statement show what dispositttion was made of said funds.

Has the Merklein sale in Phillips Co been closed up yet?

Yours truly,

C P & A B DEWEY"

March 117 Letter dated March 26th 1894 purporting to be signed by C P and A B Dewey is I think written by A. B. Dewey. Letter introduced in evidence as exhibit 75.

"Chicago Mch 26" 1894

Mr Geo W Burton Prest
Orleans Neb

Dear Sir:

Your favor of the 22nd inst received returning the 3 Garner contracts not used. We enclose herewith the quit claim deed for the Garner land which can be cancelled, as the sale did not go through. You say that Mr Wallace has executed his land contracts and notes, but you do not send them to us, and you request a receipt sent to Mr Randall for them. We are not in the habit of sending receipts in advance of something received. When Mr. Randall returns the papers as requested, in due form, we will then execute the proper receipt. The $300 paid by Mr. Wallace, and enclose by Dft in your letter, has this day been credited on the Burton & Harvey indebtedness due to us. Concerning the account to be kept on the books of
118 the 1st Nat Bk Orleans, in the name of C P & A B Dewey Trustees of Burton & Harvey, you say that you see no particular objection to having the proceeds of the sales of real estate, etc, and other collections credited to that account, unless it better enables us to check out, and apply all of the account towards paying your indebtedness to us, instead of dividing it somewhat with the Bank, to which you are also owing. It seems to us that the duties of Trustees require them to say how money should be applied towards indebtedness, as they are held directly responsible for its outlay.

We, however, have been only performing part of the duties, one would imagine, of simply advancing the large sums of money, to bolster up and keep Burton & Harvey and the Bank running, indefinitely, without having much voice in dictating how the money shall be applied, or where it shall go, that is received by them. If the application of any credit balance in the future, is to be governed by what has been done in the past,

(we having been advancing always and receiving nothing scarcely—only two small payments amounting to $470) doubtless the division of any money will be made on a basis of fairness, and whatever amount is so applied, will reduce your total indebtedness just that amount. The correspondence with reference to the Phillips Co land, sold to Jno Kerklein, we return herewith. We notice, however, that the tax sale Ctfs, on this land for 1888 & 1889 amount to $155.87 and runs to McClure, Are these not held by you. Exhibit Let 26.

Yours truly,

C P & A B Dewey

The letter of July 31, 1894, bearing the signatures of C P & A B Dewey is, I think, in the handwriting of A B Dewey. Letter introduced in evidence as exhibit 76. Exhibit Let 31.

"Chicago, July 31 1894

Mr Geo. W Burton,
Orleans Neb

Dear Sir: Yours of the 27th inst is received stating that you think that you may be unable to meet your $360. of interest, due Sept. 1, 1894, on your $12,000,00 farm loan, together with the 1893 taxes. It only shows the necessity of your making an effort at once to borrow some money from Banks,
119 as suggested to you, and pay us off; then we would be willing to advance this interest and taxes for you as above mentioned, but we will not advance any more money, until our claim is paid. Your main object should be to try and save your farm, and in order to do that, it makes it necessary for you to act promptly in trying to make some Bank loans with your stock as collateral. You speak about denationalizing the Bank and if you borrowed money on the present stock it would have to be gotten back from the Banks where left as collateral before this could be done. It is useless to suggest this as we do not see where we would be benefited by a denationalizing of the Bank, and therefore would not consent to it. The Banks would not investigate you through commercial agencies, as they do not know anything about such agencies, but would be governed by the stock as collateral, and a knowledge of the parties who are stockholders, and when your notes to them become due they would be entirely willing to renew the same, and make the interest part of the new note.

Their usual term for loaning is from 3 to 4 months, and 6

uly months when specially desired by borrower, when money is plentiful.

You will never know what you can do until you have made the effort, and it will be very necessary for you to do something at once towards the payment of Burton & Harveys debts to us personally, if you expect to us render you any further assistance.

Please advise us at once, if you will act on this suggestion so we can write Mr Hogg.

Yours truly,

C P & A B Dewey

ay The letter of May 4th 1894 bearing the signatures of C. P. and A. B. Dewey is in the handwriting of C. P. Dewey, I think.

Letter introduced in evidence as exhibit 62.

"Chicago May 4 1894

Mr J A Randall Cash
Orleans Neb

Dear Sir:

I enclose herewith Ctf #87, for 95 shares of stock of the Capital of 1st Nat Bank of Orleans Nebr. Please transfer same to Fred L Jewett 401 Chamber of Commerce Bldg, and send to me, a new Ctf in his name, and oblige.

Yours truly

C P Dewey.

ec. The letter of December 4th 1893 is in the handwriting of C. P. Dewey.

—Letter introduced in evidence as exhibit 78.

"Chicago Dec 4 1893

Mr J A Randall Cash
122 Orleans, Neb

Dear Sir: I have up your Ctf #14486 for $5000 in name of M J Mauermann due the 7th inst. You may please send me 5 Ctfs for $1000 each, payable on demand, with 8% interest, in lieu of the $5000 Ctf as above stated, which I enclose herewith. At any time that you have funds, and can pay any part of this, please do so.

Yours truly,

C P Dewey."

123 The letter of September 20, 1893, bearing the signatures of C. P. & A. B. Dewey, is I think in the handwriting of C. P. Dewey. Letter introduced in evidence as exhibit 79. Exhibit Lette 20, 1

"Chicago Sept 20 1893

Mr Geo W Burton
Orleans Neb

Dear Sir: We have given F E Robinson, at Atwood, prices
124 on the land there, on our 10 years plan, as follows, viz:

The quarter in	Sec	17	$4000
N E 1/4	"	18	2200
S E 1/4	"	18	2000
S W 1/4	"	18	1600
S E 1/4	"	4	1300

If Mr Obert can close up his deal, satisfactorily, then he would be entitled to the land at the price given him $1600. He has asked Mr Robinson to write us, to know if he could have it at the same price, on our 10 years plan. We replied that he could not but that he do so, if he paid the 10 year pruce, $2000. Mr E P Young, of your place, wrote to get prices on the Home farm, in quarter Section tracts. We wrote him to plat it and give his valuation on the different tracts, on our 10 year plan 7% plan. This is probably the best way to sell it. We will advise you when we hear from Young. We have just learned from our agent, in Phillips Co. Kan that your title to No 1/2 S E 1/4 29-2-18 is not good, that the deeds from Daniels to you, is not yet on record. Please look this deed up, and send it to us. Concerning the loan, that you expected to get for Mr Obert, there is a good deal of doubt about it, if the Banker has failed, from whom you expected it, and besides the rate of 6% is so low, that it is not likely he will now furnish it. However, if it comes, then notify us and we will furnish a deed, and if you should fail in getting it, then
125 Obert may decide to take the land on our 10 year terms. Your plans for liquidation as mentioned, in yours of the 11 inst we have not yet so fully investigated it, as to be able to give you a definite reply, and will write you about this later on.

Yours truly,

C P & A B Dewey."

The letter of December 2, 1891, bearing the signature of "C P & A B Dewey" is in the handwriting of C. P. Dewey. Letter introduced in evidence as exhibit 80.

"Chicago, Dec. 2 1891.

Mr Geo W Burton, Prest
Orleans Neb.

127 Dear Sir:

We now enclose herewith Ctfs of Stock, issued by the 1st Nat Bank Orleans Neb, as follows viz:

#43	in name of	Geo W Burton	for	35	shares
44	"	"	"	"	35	"
50	"	"	"	"	30	"
			Total	100	"

Please have issued, and send to us, in lieu of the above, new Ctfs of stock in the following names, viz:

Charles M Hogg	20 shares
Albert B Dewey	40 "
Charles P Dewey	40 "

Yours truly,
C. P. & A. B. DEWEY."

126 The letter of December 7 1891 bearing the signature of "C. P. & A. B. Dewey" is in the handwriting of C. P. Dewey. Letter introduced in evidence as exhibit 81.

"Chicago, Dec 7 1891

Mr Geo. W. Burton, Prest.
Orleans, Nebr.

Dear Sir:—

128 Your favor of the 4th inst. is received, enclosing Stock Ctfs as follows viz:

One to	Chas M Hogg	20 shares
" "	Albert B Dewey	40 shares
" "	Charles P Dewey	40 "

We have also received the editorial clipping, written by you, which is very satisfactory. Concerning the notice of the annual meeeting, and the intention to change your articles of association, so as to elect a Vice President, who need not be a member of the Board of Directors, we think that the inferences to be deduced from the Deputy Comptroller's letters, are rather against it, than in favor of it, and we ourselves are very doubtful about such a proceeding. We are of the opinion that this is necessarily a part of the National Banking laws that could only

be changed by an act of Congress, and not by a Board of Directors of any one bank, to suit their own purpose. Exhibit Lette 7, 18

To act in the matter without more light and information, might render us subject to criticism and the next annual meeting might be declared illegal. We do not see the necessity of taking any chances, when Albert is perfectly satisfied not to become a Director. His name is mentioned prominently among the list of stockholders, which, it is proposed to advertise in the papers, and the object is there-by accomplished—that he is known to be a stockholder, with large interests in the bank, and that will give as much credit to the bank, as to use his name in any other way. Concerning the editorial notice, you say that your Editor will print 50 or more extra copies this week, so that you may keep some on hands for distribution. We would suggest a little change in the article, and in the place where we have crossed out, please insert the enclosed copy. We think it will have more weight with the people down at Cadiz. We enclose herewith a copy for an advertisement, to be inserted in both the "Sentinel" and "Republican" at Cadiz, Ohio, and when you send them a copy of the advertisement to have incerted for one year, please also send them a copy of the newspaper, with the editorial article well marked, so that it may be easily found, and request them to publish it, as an extract from your Orleans Courrier". We enclose herewith, a list of names, to whom please send copies of your paper.

Please use for wrappers, your Bank envelopes, with the ends cut off, as per enclosed sample.

Yours truly,

C P & A B Dewey."

I dont know in whose handwriting the advertisement is, which is handed me, of the First National Bank of Orleans. I dont
129 know how it came into the bank. It is on the letter head of C. P. and A. B. Dewey, and the handwriting in the body of the advertisement is the same as the letter which I have just identified.

Advertisement introduced in evidence as exhibit 82.

"Chicago, ... 189..

Newspapers to be sent to the following:
Dumont Clark, V. Prest. Amer. Exchg Nat. Bk N Y
Isaac G. Lombard Prest. Nat'l Bank of Amer. Chicago.
First Nat Bank Smithfield Ohio.
First Nat Bank St Clirville Ohio.
D. Cunningham Prest. Harrison Nat Bk Cadiz Ohio.

Dec. M P Browne Prest. Farmers & Merchants Mechanics Nat Bk Cadiz O.
J B Lyons Cadiz Ohio
Richard Lyons Cadiz Ohio
C M Hogg Cadiz Ohio
130 J N Vance Wheeling W Va.
J D Culbertson Wheeling W Va.
B W Pertson Wheeling W Va.
W F Peterson Wheeling W Va.
H Quarrier Wheeling W Va.
W H Arnold Editor Cadiz "Sentinel" Cadiz O.
W B Hearn Editor Cadiz "Republican" Cadiz O.
Mrs N Dewey Cadiz Ohio
Wm Mosebach 2333 Michigan Av. Chicago Ills.
E A Cummings S E Cor La Salle & Madison Sts. Chicago.
C P & A B Dewey Chicago Ills.
Speice & North Columbus Neb
First Nat Bank Mt Pleasant, Ohio.
Do not forget to mark the editorial article with a red or blue pencil, well, before sending out the newspapers."

Feb. The letter of February 4th 1893 is signed in the handwriting of C. P. Dewey.

Letter introduced in evidence as exhibit 83.

This letter, as well as all the following letters, is dated at Chicago, and addressed to either J. A. Randall Cashier or to George W. Burton President, Orleans, Nebraska.

"Feby 4 1893

Dear Sir: I enclose herewith stock Ctfs of 1st Nat Bank Orleans Neb. as follows viz:

#52 for 50 shares
131 " 62 " 40 "
" 76 " 15 "

Total 105 "

Please transfer to F. L. Jewett 95 shares and C. P. Dewey 10 shares and return the new Ctfs to me and oblige.

Very truly

C. P. Dewey."

I have no memory of this letter being received at the Bank. I could not remember this particular letter, there were so many of them came that it is impossible for me to remember. I am under the impression that the stock of C. P. Dewey was at that time transferred to the parties named in the letter, but I

132 would have to answer the inquiry from the stock book. I have looked at the stock books and find certificates isued to those parties February 6, that is, two days after the date of this letter.

The letter of February 18th 1893 bearing the names of C. P. & A B Dewey is in the handwriting of C. P. Dewey: Exhibit Letter 18, 1

Letter introduced in evidence as exhibit 84.

"Feby 18 1893

Mr G W Burton
Orleans Neb.

Dear Sir:

Your several favors received. We agree with you that if you cannot get $2100 for your tree claim, you had best accept $2000, or even a little less, if it will effect a sale. It is a good deal better for B & H to be holding some securities bringing in 7% or 8% interest, rather than having it all going out. We are glad to learn that you have prospects of making several sales of land. Concerning the Bank lot, you were certain when we were there, that you had, sometime ago, made the deed, which could not be found. Now since having made the deed, there seems to be an error in the description, which should read the South 85 feet of lot 332, instead of 75 feet.

134 Please get this right. The amount that is charged up to Real Estate, in the Bank books, on a/c of the building and lot, would justify the deeding of the whole lot to the bank. Answering yours of the 13th inst. we would say, that we always sell whenever we have customers, and would advise you, that whenever you get a good customer, at a fair price, for any of your home farm lands, or any thing else, that you had best not miss the opportunity to sell, and not pin too much faith to the Free Methodist College scheme. Of course it is a good thing for you to take about, but it makes it a good opportunity to sell out on, and in your condition, you should avail yourself of every opportunity to do so.

We have received the 30 shares of Bank Stock, to be left with us as collateral for the sums loaned you. You say that you have just learned that your $3000. note due Mch 2/93, and placed with the Capital Nat Bank of Lincoln, has been transferred by them,and is now held by the Continental Nat Bank of Boston. It seems you have been very slow in getting this information.

Now we would advise you to write the latter Bank at once, that you are ready to take up and pay the note at maturity, the

Feb. amount due on same, telling them there should be a certain credit, and providing all the collaterals belonging to you, are turned over at the time of payment. Under no condition would be advise paying it in any other way, and certainly we will not advance any money to you, to pay it with, except in the manner named. You had best attend to this at once. When we were in your place last, we advised you then, to write Mr Harvey to look up your collaterals, at the Capital Nat Bank, and ascertain all about them, but it seems he has been a long time in getting around to it, or else you have failed to advise us as to their condition, or that he has done anything. We have instructed Mr Randall that he must carefully list all of the B & H coupons, 2nd mortgage notes, and tax sale Ctfs that were turned over to us to be held to secure your Bank obligations, so that when any go out for collection, or when dfts are returned in payment of them, the record of the transaction can be made at that time. We will hold him strictly accountable for them, and we trust that you will see that he does it correctly.

Very truly,

C P & A B Dewey.

April 133 The letter of April 26, 1893, purporting to be signed by C. P. and A. B. Dewey, is in the handwriting of C. P. Dewey. Letter introduced in evidence as exhibit 85.

"Apr 29 1893

Mr Geo W Burton
Orleans Neb.

Dear Sir:—

Your several recent favors received, concerning the notes of Burton & Harvey due the 24" inst. as follows viz:

$2500.	dated	Jany 24th	and due	Apr 24th	}	to C P Dewey
1250.	"	Feby 9th	and due	Apr 24th	}	bearing 9%
2900.	"	Feby 27th	and due	Apr 24th	}	interest
2500.	dated	Jan 24th	and due	April 24th	}	To A B Dewey
1250.	"	Feby 9th	"	"	}	bearing 9%
2900.	"	Feby 27th	"	"	}	interest

136 We would prefer to have the interest on these notes paid and remitted, to April 24th. You may then have new notes prepared, one for $6650. to C P Dewey and one for $6650 to A B Dewey, both dated Apr 24" 1893, payable on demand, with 9% interest, semi-annually.

As these notes will not be changed until they are paid off, (and also put in shape that you can pay a part at any time), we would prefer to have Mr Harvey sign too, as well as Bur-

ton & Harvey your sister and yourself. Please write in the notes the word "Nine" instead of the figure 9, for the rate, Also make them payable at 1st Nat Bank, Orleans Neb.

Yours trly

C P & A B Dewey.

The letter of May 15th 1893, signed "C. P & A. B. Dewey, is, I think, written by A. B. Dewey. Exhibit Lette 15, 1

Letter introduced in evidence as exhibit 86.

"May 15 1893.

Mr Geo W Burton Prest

Orleans Neb

138 Dear Sir: When we were in Orleans last we noticed that a note of one Friendly, for $600. discounted by the Bank for Burton & Harvey, had been sent off for collection, and that the Bank held nothing to take the place of same, except the Attorneys receipt dated in November 1888.

When the Bank examiner comes around and finds that nothing has been done regarding the payment of this note, he is likely to make trouble, especially when he finds so many other things not in accordance with the National Banking Laws. We would suggest that you use the balance now standing to the credit of Burton and Harvey, in taking up this note with the interest that may be due on same. Should the Friendly note and interest amount to more than B & H balance, you could have the firms note executed and given to the Bank for the excess. Please give this matter immediate attention as we think it is important to the interest of the Bank. Owing to the numerous Bank failures throughout the Country, the Examiner will be very particular when looking over your paper. Please have all overdue paper renewed at once as you are likely to have the examiner visit you at most any time.

Yours truly,

C P & A B Dewey."

The letter of May 27th 1893 purporting to be signed by C P P & A B Dewey is signed in the handwriting of C P Dewey. Exhibit Lette 27, 1

137 Letter introduced in evidence as exhibit 87.

"Chicago, May 27 1893.

Dear Sir:

Your favor of the 24" Inst. rec'd stating that Burton and Harvey's Note due June 4th at the First National Bank of this City cannot be renewed by McShane and Condon of Omaha, with

May whom it was first negotiated, and that they desire that it b
paid. You propose one way of paying it, by overdrawing Bur
ton & Harvey's account at the First National Bank of Orleans
Concerning this method of paying Burton & Harvey's indebted
ness, we most seriously object, and about which we have s
often spoken, that we would not tolerate it under any circum
stances,—but it seems to come uppermost in your mind an
you suggest it every now and then, as being the only way t
get out of difficulties, and pay debts. This is a very danger
ous way of doing a banking business, and you see the bad re
sults from it, in the many bank failures that have taken plac
all over the country in the last few months. As long as we
139 are connected with your Bank we shall oppose overchecking by
everyone. The balance in the Bank standing to Burton and
Harvey's account we desire you to apply on the Friedly Note
due the Bank, about which we wrote you some time ago. This
Note has been in bad shape for a long time, and we desire you
to fix it up at once. This being done, we will loan you tem
porarily $2500. to take up the McShane and Condon Note above
named,—the Bank Stock now with it to be held by us as col
lateral with the new Notes. You will please have drawn and
sent us, two Notes of $1250. each, payable on demand, and
dated at Orleans, signed by Burton & Harvey, G W Burton,
A E Harvey, and M F Burton, with 9% interest,—one to the
order of A B Dewey, and the other C P Dewey, and if received
in time, we will attend to paying the note at the First National
Bank. Some time ago, you agreed to execute and fix up a deed
for the additional ten feet belonging to the Bank lot. As yet
we have never been advised by Mr. Randall that you have done
it. If this has not been done we desire that you attend to it at
once, and hand the Deed over to Mr. Randall, so that he may
file it with the Bank Papers, after it has been recorded. Please
advise us the condition of the Taxes and Interest on your home
place, and when due and payable,—also that of Mr. Harvey's
on his home place.

. . . . . .

Very truly,

C P & A B Dewey"

The letter of June 3, 1893, bearing the signature of C. P. Exhi
140 & A. B. Dewey, is in the handwriting of C. P. Dewey. 3.
Letter introduced in evidence as exhibit 88.

"June 3rd 1893.

Dear Sir: We have received from Mr. Harvey, your 2 notes for $1250 each, and we have this day taken up and paid the Burton & Harvey note for $2500. due at the 1st Nat Bank of this City, and enclose same herewith, canceled. We also lifted the 30 shares of Bank Stock, which we hold as additional security for money advanced Burton & Harvey. In our former letter, we advised, that you apply Burton & Harvey's bank balance towards the payment of the Friedly note, due the 1st Nat Bank of Orleans, for which Burton & Harvey are liable. This note, we understand has long been in bad shape, being entirely worthless, long over due, and the original note in the hands of some attorneys, to whom it was sent, and probably lost, and the Bank holds nothing but a memorandum of said note, or a copy. Now the Examiner has frequently called your
141 attention to this, and when he comes again, and sees that nothing has been done with it, he will like it. You say in your letter of the 29" Ult, that you have paid the interest on this note, amounting to $407.50. What we desire is, that you wipe out the note entirely, and take it off the books of the Bank. If the note and interest should amount to more than your balance in the Bank, then you can give the Bank a Burton & Harvey demand note for the difference.

. . . . . .

Yours truly,
C P & A B Dewey.

P. S. Have you ever succeeded in getting a statement from C H Smith of Hartford, as to the exact amount and descriptions of the collaterals he has in his hands?

The amount of your note to Smith is $2500. He holds $2500 of Stock, and a lot of Tax Ctfs, and other collaterals. For what other purpose does he hold these collaterals? Is it for endorsements by you on other paper? Please write us fully about this, and give us an approximate amount of the collaterals he does hold, and the kind and condition they are in, and how he has been applying the proceeds as he has collected them.

Have you any idea as to the value of the land in Rawlins
142 Co. Kan, covered by the H. M. Cavanaugh School Contract, viz: N. E. 1/4 18-3-33? The interest on this is due the 13" inst."

Aug. The signature to letter of August 3rd 1893 is in the handwriting of C. P. Dewey.

—Letter introduced in evidence as exhibit 89.

Aug 3 1893

Mr Geo W Burton Pres, and J A Randall Cash.
Orleans Neb.

Dear Sirs:

Your favor of the 1st inst. received, giving the condition of your cash resources, and asking for some help, in view of the fact that your deposits are being reduced from day to day, but the gradual withdrawal of funds. A B Dewey has gone to Ohio, for a visit, and he not being here to assist in raising funds for you, I have been out to see what I could do myself. Money matters are extremely close here, and while our best Banks are very strong, they are not willing to make any new loans at this time. I have, however, arranged for $5000.00 which has been ordered sent to you in currency, from A Castetter, Banker, Blair, Neb.

It terms I have made, are viz:

That you are to issue a certificate of Deposit in the name of M J Mauermann for $5000. payable in 4 months, and to remit here a Dft for $200. The matter of interest, I do not regard as important, just at this time.

You are also to send $7500. of your best notes, as collateral security, with power of Attorney, signed by both of you, as
143 President and Cashier, with the seal of the Bank on same, authorizing me to make this and other loans, if necessary, for the benefit of the Bank, not exceeding $20,000, and also authorizing me to endorse this paper for collection, if necessary. Of course no endorsements should appear on the paper by you there. Now do not send anything but paper that you can recommend. I will arrange to have any paper exchanged, during the time of the loan if necessary to do so. I would think it important, just at this time, to keep the bulk of your funds in your vault, and not so much at Omaha and N. Y., and particularly the latter, so far away. I think it would be advisable, to write to both of your Correspondents, and ask them if your bank can borrrow $5000 of each, to pay there on deposit, and drawn only in case you need it.

I think you are entitled to these accommodations from them, if they are in a condition to grant them.

You speak of paying and remitting on some Time Ctfs. in Ohio. Were they due? Please explain all about it. Whilst there will still be a few failures, all over the country, I am in-

clined to believe, that most of the trouble is over. I would like to have a daily report from you, sent each day, for a time, as you make them up daily, it is easy to take a moment's time to copy. We would like to have you send us those deeds that have been so long delayed.

Yours truly,

C P DEWEY."

The letter of August 9 1893 is signed by C. P. Dewey. Exhibit Lette 9, 18

144 Letter introduced in evidence as exhibit 90.

"Aug 9 1893

Mr J A Randall, Cashier
Orleans, Neb

Dear Sir: Your favor of the 7" inst received, enclosing Ctf of Deposit, to M J Mauermann for $500 sent by me, and received by you, and collaterals as named, to secure loan, also N Y Dft for $200. This currency ought to put you in fine condition, and sufficient to caay you through all right. ,It takes only a few moments to compile a statement of your cash bal-
145 ances, and I would like to hear from you every day, if possible, giving any other items of interest that may occur, until business over the country, becomes more settled. The N Y Banks are evidently hard pressed, and they are neither discounting nor paying out currency. You can expect no accommodations from your correspondent there. You had best use up your balance there, as fast as you can, in the regular course of business. Keep some balance at the U S Nat, but only enough to accommodate customers. Your largest balance should be cash in your valt.

Very truly,

C P DEWEY"

The signature to the letter of August 19 1893 signed "C P & A B Dewey" is I think in the handwriting of A. B. Dewey. Exhib Let 19,
Letter introduced in evidence as exhibit 91.

"Aug 19 1893

Dear Sir: Please advise us what the condition is of your Interest payments to Smith, Porter et al down East, besides the holder of your $12,000, mortgage. If there any of this Interest due or soon to become due, and are any of these parties urging payments from you, or manifesting any uneasiness, re-
147 garding your indebtedness?

Please also inform us if Mr Harvey is keeping up the Int

payments on the mortgage covering his home farm. Please inform us fully regarding all these matters. Have both you and Mr Harvey paid the 1892 Taxes on your home farms and other lands?

Yours truly,

C P & A B DEWEY"

Sept. The signature of the letter of September 2 1893 is in the handwriting of C. P. Dewey.

Letter introduced in evidence as exhibit 92.

"Manhattan, Kansas, Sep 2nd 1893

Mr J A Randall Cash.
Orleans Neb

Dr Sir:

I enclose herewith a N Y Dft for $3000, for which please send me 3 Bank C D for $1000 each, payable on demand drawing 8% int. Whilst at this time I can make a greater int out of this money, but I send it to you, for the protection of the Bank, & at any time you see you can spare the funds, then
148 you can return them, & stop the interest, & in this shape you can pay it in $1000 lots, at your convenience, which will no doubt suit you. If you think you will need it I will send you $2000 or $3000 more, on my return to Chicago.

After due deliberation, we decided, for the better security of the Bank, as well as our-selves, to record the deeds, of which you can notify Mr Burton.

Very truly,

C P DEWEY

Please send the C Ds to my address at Chicago."

Aug. 146 The letter of September 20th, 1893, bearing the signature of C. P. and A. B. Dewey, is signed in the handwriting of C. P. Dewey.

—Letter introduced in evidence as exhibit 79.

The letter of August 28, 1894, bears the signature of C P
149 & A B Dewey, in the handwriting of C. P. Dewey.

Letter introduced in evidence as exhibit 93.

"Aug 28" 1894

Mr Geo W Burton Prest
Orleans Neb

Dear Sir:

Your letter of 23rd inst received, enclosing your 2 notes of $180 each, which you ask us to take, and furnish you enough

money to pay the 6 months' interest on your $12,000.00 loan due Sept 1st next. We return herewith the notes, as we are not willing to continue to advance you money, when you mani-
150 fest such an unwillingness to properly secure us.

If you are willing to give us a Quit-Claim deed that we could hold unrecorded, for a time agreed upon, we would then feel more secure, and would be willing to advance this money to you.

Yours truly,

C P & A B DEWEY."

Exhibit Lette 28, 1

The letter of October 3, 1894, purporting to be signed by C. P. & A B. Dewey, is signed in the handwriting of A. B. Dewey.

Exhibit Lette 1894

Letter introduced in evidence as exhibit 94.

"Oct 3rd 1894

Dear Sir: Yours of the 28th ult. is received enclosing your Quit Claim deed to Charles P Dewey for your home farm, which you say is to be held unrecorded for a time agreed upon, but you did not name the time.

If you will write us at once, naming January 1, 1896 as being the limit of time you wish this deed held unrecorded by by us, we will remit immediately, upon receipt of your letter, for the $360 of interest due Sept 1/94 on your $12,000 Mtg to the Nebraska Loan & Trust Co. We would not be willing to extend the time beyond that, but would expect, by the recording of this deed, a full and complete title in fee simple to the land described therein.

Yours truly,

C P & A B DEWEY"

152 The letter of October 18 1894, bears the signatures of C P and A B Dewey and signatures are in the handwriting of A B Dewey.

Exhibit Lette 18, 1

Letter introduced in evidence as exhibit 95.

"Oct 18 1894

Dear Sir: Your letters of Sept 28 and Oct. 5th are received enclosing Q. C. deed to C P Dewey for your home farm; also
153 agreeing that said deed may be recorded Jany 1st 1896, conveying absolute title to him. The proceeds of sales of this land to be credited on your indebtedness to us, and the residue on your indebtedness to the Bank.

We have paid the $360 coupon (total amt $363.40) due Sept

1/94 on your $12,000. loan from the Nebraska Loan and T
Co. as per our letter of Aug. 28 and Oct. 2d. Kip. You
exclusive agency agreement has expired, and any person n
ing a sale of the land would be entitled to the commissio

Yours truly,

C P & A B DEWEY"

Nov. The letter of November 22, 1894, is signed by C. P. Dew
Letter introduced in evidence as exhibit 96.

"Nov 22 189

Mr J A Randall Cash
Orleans Nebr
Dear Sir:

Will you kindly send me a dozen of your last printed B
statements, and oblige, How is everything?

C P DEWEY

154 Will you be able to pay any more of our Ctfs soon?"

Dec. The signature to the letter of December 6 1894 is in
155 handwriting of C P Dewey.
Letter introduced in evidence as exhibit 97.

"Dec 6th 189

Dear Sir: Your two notes have been standing overdue a l
time, and I prefer to have them renewed, and I enclose a n
note for that purpose, dated Dec 1st 1894 $9085.

One note dated Apl 24/93	$6650	
Interest on same to Dec 1/94	1009.88	
156 One note dated June 4/93	1250.	
Interest on same to Dec 1/94	175.43	9085.

Please sign and endorse Burton & Harvey on new note, th
sign individually, yourself, your ssiter and Mr Harvey. Th
you and your sister under the collateral agreement. Ple
return the note promptly and I will cancel and send you the
notes.

Yours truly,

C P DEWEY"

The letter of December 11, 1894, was signed by C. P. Dewe
His signature is attached to the letter.
Letter introduced in evidence as exhibit 98.

"Dec 11 1894

Mr J A Randall Cash
Orleans Neb

Dear Sir: I enclose herewith Ctf #95 shares in the Fir
Nat Bank Orleans, in the name of F L Jewett.
157 Please issue, in same name, the following Ctfs

3 for	$500 each	$1500
4 "	1000 each	4000.
2 for	2000 each	4000

and forward same to me and oblige.

Yours truly,

C P Dewey"

Letter of December 11 1894 is signed by C. P. Dewey ar
158 his signature is attached thereto.
Letter introduced in evidence as exhibit 99.

"Dec 11 1894

Dear Sir: Your favor of the 8" inst received returning th
renewal note, and stating that you do not understand how
make up the amount. The two notes are payable semi-a
nually at 9% interest, and I enclose herewith a statement
same. This is an individual matter and none of the fun
collected by C. P. & A. B. Dewey were applied on these note
C. P. & A. B. D. did collect from Pinegar $220 less $50 co
mission paid, and from Wallace $400. less $100 commissio
paid making $470.00 in all which they applied as far as
went towards paying the interest due on the Home farm mor
159 gage $363.40. Home farm tax $408.43, Nic Mayer mortgag
$454.67 and Rawlins Co school contract $25.92. So you s
there was a large deficiency had to be made up and paid by
P & A B D. for your account. After examining the statemen
if found correct, please have signed as indicated in my form
letter and return the enclosed note to me.

Yours truly,

C P Dewey."

Dec. Letter of December 22nd, 1894, was signed by C. P. Dewey. Letter introduced in evidence as exhibit 100.

"Dec 22 1894

Dear Sir: As I need a little Christmas money, I enclose herewith for payment, your Bank Ctf #14551 for $1000 and interest at 8%, from Dec 7/93.

161 Please send me a dozen printed slips, of your last called Bank Statement, Dec 19/94, whenever you have them ready, and oblige.

Yours truly,

C P Dewey"

Dec. 160 The letter of December 31 1894 bears the genuine signature of C. P. Dewey.

Letter introduced in evidence as exhibit 101.

"Dec 31 1894

Mr J A Randall Cash

162 Orleans Neb

Dear Sir: I enclose herewith Ctf $85 for 10 shares of the Capital stock of the 1st Nat Bank Orleans, which you will please have transferred to Fred L Jewett and have issued in his name, two Ctfs for 5 shares each, which please send to me. You will please comply with the above request promptly, and oblige.

Yours truly,

C P. Dewey"

Jan. 163 The two letters of January 21, 1895, bear each the genuine signature of C. P. Dewey.

Letters introduced in evidence as exhibits 102 and 103.

"Jany 21 1895

Dear Sir: I notice by your printed letter heads, that you still continue to use my name as Voce-President of First Nat Bank,

164 Orleans Neb.

This this, I most ceriously object, as you are doing it without authority from me, and you must stop it at once.

Yours truly,

C P Dewey."

Jany 21 1895 Exhibit Lette 21, 18

Dear Sir: I notice by the printed letter heads of the First Nat Bank of Orleans Neb. that you still continue to use my name as Vice Prest. of the Bank, to which I most seriously object. You very well know that I do not own nor hold any stock of the Bank in my own name, and could not legally be an officer
165 of the Bank if I would, and I certainly do not wish to continue as such, if I could. You will therefore please discontinue the use of my name, as an officer or stockholder of the Bank.

I have this day written Mr Randall similar instructions which must be obeyed by both you and him.

Yours truly,

C P Dewey"

The third letter of Jany 21 1895 bears the genuine signature of C. P. Dewey. Exhibit Lette 21, 1

Letter introduced in evidence as exhibit 104.

"Jany 21" 1895

Dear Sir: Your favor of the 18" inst. received, enclosing
166 your Bank stock Ctfs #112 for 3 shares, and #113 for 2 shares, in the name of Geo W. Burton, both Ctfs being in lieu of Ctf #72 for 5 shares, in name of Geo W. Burton, sent to you, to be cancelled.

Yours truly

C. P. Dewey"

The letters of February 11 1894 and February 16 1894 bear the genuine signature of C. P. Dewey. Exhibi Lett 11, 1

Letters introduced in evidence as exhibits 105 and 106.

"Feby 11th 1895

Dear Sir: Your favor of the 2nd received, during my absence, stating that it would not be convenient for you to pay my Ctfs of deposit, without borrowing. In doing this, you would be doing nothing more than what I very often have to do
167 myself. I really need all my money just now, but I will only ask you to pay me $500. during the next 10 days, which will give you ample time to prepare for this small payment.

Yours truly,

C. P. Dewey"

Feb. "Feby 16" 1895

Dear Sir: I notice by your letter heads that you still con
tinue to use my name as vice-president of your Bank. I am
not now and have not been for some time, and duly notified you
168 to cease using my name as such. It is misleading to the publi
and will make you lots of trouble if continued. My name must
be stamped off. I have written Mr Randall, the Cashier, a simi
lar letter.

Yours truly,

C P Dewey."

At this stage of the testimony Mr. Lambertson, Counsel for
the Complainant, made the following offer:

"In as much as these letters are part of the records of the
First National Bank of Orleans and the Receivership there
of, I ask the notary to make copies of the same and attach
them to the depositions in place of the originals, but I agree
to produce the original letters at the hearing.

171 I also ask to have copies of the certificates of stock which
have been introduced in evidence, and the parts of the stock
book, which have been introduced, made and attached to
these depositions, in as much as the same are part of the re-
ceivers' records, and cannot be attached to the depositions or
taken out of the custody of the receiver.

I agree however, to produce the stock book, and the cer-
tificates and stubs thereof on the hearing, and the defendant
is at liberty and is hereby given the privilege of examining
the books or attaching copies of any part thereof to any tes-
timony they may desire to put in, on giving us proper no-
tice of what books, papers and records they desire to inspect
and take copies of."

of J. A. Witness:

I recognize the certificate book, in which part of the cer-
tificates are attached to the stubs, and the stock book, as part of
172 the records of the First National Bank of Orleans.

As to this correspondence, we received a great many letters,
of course, from C P and A B Dewey, and from them individ-
ually, and of course while I cannot swear positively that these
particular letters came to the bank, I would naturally think
they did. A good many of these letters were addressed to me,
and I recognize the contents of a portion of them; of course
it has been a long while ago and I did not charge my mind with
it particularly. In reading the contents of these letters, a part
of them at least I recognize as having been received by the

Bank; those letter or similar letters to those; of course I pre- Testimo Rand
sume it was those same letters.

173 The two books which Mr. McDonald referred to as being in my possession and custody when he was on the stand are here, I suppose; I brought them here on Saturday. One of them is a note register and the other I think was the report of the receiver or the account of the receiver.

Said books were identified by the reporter as exhibits 108 and 109.

The certificate book with the stubs and certificates about which I have testified is exhibit 1, and the stock book is marked exhibit 2.

The assets and liabilities of the bank say on December 1st 1894 will appear on the trial balance of that day. I have

174 turned to the trial balance of that day and the total footing of the assets is $108,492.64, and the liabilities is the same amount. I kept the book and I think I kept it correctly. The entries found therein were made from day to day. The book has been identified by the reporter as exhibit 7. The amount of bills receivable on hand at that date were $67,869.25. The bills receivable would be listed in the loan and discount register before me, and the items are numerous and are not bunched up in one place. It requires considerable work to ascertain where they are and then it is uncertain whether or not you catch all of them in there. I have carefully gone over the book and made a list of the bills receivable in the bank at that time as far as I could find them in this book. They do not agree with the sum total as shown by the trial balance. I think what I found

175 did not. The date of payment here may not have always been accurate and in that way I may have missed some. I aimed to take all that appeared as not being paid December 1 1894, but I notice there are quite a good many that were checked off here the last day of November 1894. I mislaid my figures as to the sum total of bills receivable which I found. It did not amount, however, to as much as was shown in the trial balance. I think this amounted to somewhere in the neighborhood of $60,000. while the amount shown by the trial balance was $67,000 and something.

Q. You don't mean to say that there was any discrepancy in the record, that you were not able to find in the Loan and

177 Discount Register a sufficient number of bills receivable to aggregate the amount as shown by the trial balance on the first day of December 1894? A. No not in this particular book. Now this book commenced about the first of January

of J. A.

1893; I don't know whether there would be and carried
178 ward from the book that was used prior to this or not, bu
was not able to get that book. I will state this, we mad
schedule every thirty days, so that the amount of notes as
resented in the trial balance was on hand.

I have made a list of the bills receivable that I was able
find on the Loan & Dscount Register, or in the bank, on
cember 1, 1894.—See record pg. 176 for list. Turning to
trial balance I find that the bills receivable of the bank J
4th 1895 was $64,629.57; May 31st it was $64,576.51;
total assets and liabilities as shown June 4 were $102,416.
I kept the book from which I am now testifying, and I th
179 it is accurate and correct. The figures were entered in it fr
day to day, in the due and regular course of business.

A portion of the trial balance comprising entres under d
of June 4 1895 and also items commencing with the wo
"cash" and ending with the word "deposit" at the left ha
showing the different items of assets and liabilities, are int
duced in evidence as exhibit 109, found on pg. 180 of
record.

I examined the list of assets entered by the receiver P.
Hedlund in one of his receiver's books at the time the ba
181 failed, May 20 1897; I made a list of the assets, just the bi
receivable as shown by that book; I think the list is corre
in the main. I find about 80 of the aggregate amount of t
same bills receivable that were in the bank December 1st 18
were in the bank May 20, 1897 when the bank failed. I fi
about eighty notes here against parties at the time the ba
failed and these same parties I find owed the bank certa
notes December 1st 1894. Of course I cannot say that th
are the same notes; they are the same parties. I have trac
182 them from the Discount Register, and they appear most
them to be practically the same amounts, increased in so
cases.

The total aggregate of these bills receivable in the bank
December 1st 1894 was $49,150.41. I cannot say that this
against the same parties exactly. I shall want to modify th
answer a little. I will give this amount, on May 20, at t
time the bank failed, $57,241.62. These were practically ca
ried forward, or seemed to be, but there were on or two change
for instance, December 1st 1894, some important notes we
in there that were not at this time, and one other party
183 least, but the amount of those notes was included in this $57

241.62. In the majority of cases I think the increase in the total amount of these notes from 1894 to 1897 was caused by accrued interest. Many of them did not increase at all. While I was in the bank a number of these notes I know were increased by the addition of interest; that is, the parties owing these notes did not pay the interest from time to time as the notes fell due and the amount was added in and a new note taken from time to time. I cannot say as to that; after I left the bank I have no knowledge; but in my judgment the most of the amounts that grew from 1894 to 1897 were made up that way. One or two of them increased in such an amount that it could not have been that, but they were smaller notes, not large notes. Testimo Rand

The plaintiff here introduces in evidence the tabulated statement showing names and amounts of bills receivable in the Bank December 1 1894 and the amounts and names of such notes in the bank May 20 1897, being identified as exhibit 110.

LIST OF BILLLS RECEIVABLE, AMOUNTS DUE THE FIRST NATIONAL BANK OF ORLEANS NEBRASKA, DECEMBER 1, 1894, AND WHICH REMAINED IN THE BANK AT THE TIME OF ITS FAILURE ..... 1897. Exhibi

186

	Due 12/1/94.	Due when Bank failed.
Ayers James	$12.00	$14.75
Bowen J	25.00	32.75
Brown W C	186.40	
Brown V B	1705.00	1705.00
Byerman E J	331.18	
Burton M F	5000.00	5000.00
Burton G W	279.50	307.00
	4168.00	4168.00
Burton A H	1149.80	3303.80
Burton H W		1000.00
Burton A H	140.50	
Brown H E	37.70	
Bischoff M	100.00	
Ball C A	282.95	5.35
Balcom P S	15.00	11.60
Brocker Fritz	77.45	55.00
Bensel Aug	14.80	
Butler Aug	16.75	
Carson Ellis	11.50	

	Comstock Frank	48.75		
	Cramblett A M	80.00		82.40
	Cook G W	59.50		54.25
	Cole Geo C	10.00		
	Dubois Francis J	54.50		58.00
	Doherty Michael	102.75		
	Dunlay Bros	727.15		
	Dyer E F	13.85		14.80
	Day J H	40.00		15.00
187	Dunlay & Gibbons	3145.90		
	Davis J W	31.75		
	Dunlay Jerry	300.00		
	Deabinderfer H.	111.90		170.00
	Erwin W M	20.00		
	Ekberry J P	28.25		
	Ellis A C	800.00		
	Finley O	172.70		214.45
	Farrell & McDonough	1729.65 239.55		460.00 2129.65
	Cahley John A	261.00		140.60
	Gibbons Pat	1000.00 1000.00		
	Gaddis J. C	12.80		
	Graft Emma J	163.75		
	Gilliland W T	19.10 381.		
	Gonser A H	25.00		
	Hiatt J M	45.00		199.75
	Hovey P E	1200.00	W B Price	1200.00
	Hedman Jonas	100.05		100.00
	Harvey C B	4553.01		1900.00
	Harvey A E	543.00		4996.00
	Haywood B S et al	200.00 649.75	H T F	649.75 79.50
	Herald Christ	55.65		60.25
	Hopper Christ	10.00		
	Interstate L & T P	5000.00		5000.00
	Joyce Patrick	37.50		45.00
	Jennings Wm	20.00		18.25
	Joyce W H	31.00		43.00
	Jordan C E	20.00		26.50
	Johnsen John W	50.00		
188	Joyce M	22.70		27.20
	Kinsman Margaret	321.25		

	Kirkpatrick S B & M J	1056.85	1387.55 Exhibit
	Longsine Alex	51.40	51.40
	Lester Joseph	77.45	19.10
	Larimer Thos	600.00	600.00
	Lampson J T	175.65	222.20
	Lover John	9.50	9.50
	Munson S	90.00	
	Morgan S	45.25 20.00	
	Moore John	15.00	
	McCoy W S	10.50	
			L A 500.00
	McNeal L A	934.70	A 485.55
	McKee H J	563.37	861.00
	McGrew C A	50.00	
	Murdock R. C.	62.30	175.10
	Mohr Benno	28.25	28.25
	McCoy Jas	56.00	49.35
	Martin Philip	152.85	193.85
	Munson P H	250.00	141.00
	Mills B D	2000.00	2197.50
	Morris T J	16.55	
	Morris C H	42.00	
	Neubauer	1387.15	1387.50
	Neufelt Gustor	33.43	47.00
	Newman L A	35.20	
	Olinyter O B	48.75	
	Obert H H	300.00	
	Orleans College	996.31	1286.55
	J. L. Dodge Pt		
189	Palmer J A	293.50	337.65
	Purdy G R	22.00	22.00
	Pove Mary A	284.62	
	Prickett Byron	267.30	360.00
	Poppert Peter H	31.00	20.00
	Pope C	275.65	
	Parsons C W	15.75	
	Proper & Watts	659.56	890.75
	Quinn John	33.08	10.00
	Riley C W	10.05	
	Roberson C A	108.60	117.30
	Richmond A	200.00	

	Roberson H L	112.90	
	Randall J A	2900.00 1000.00	
	Randall	225.00 25.00	296.20
	Rubottom John L	10.60	13.35
	Reed John	100.00	
	Russell Thos	73.90	42.25
	Reynolds M I	75.80	
	Stowell M T	58.43	73.70
	Stampher Carl	61.75	
	Simpson C T	52.15	56.00
	Stromsberg J W	55.00	45.00
	Soully B F	95.00	107.12
	Sitler H O	700.00	700.00
	Shook A E	24.15	
	State Bank Acct C W W, Cashier	750.00 1000.00	1600.00
	Stitt F H	130.78	54.80
	Tax Ctf	24.17	
	Thompson Ohio	16.00	15.15
	Thompson Thos B	68.90	136.00
	Tunison Abram	85.70	
	Thomas C	100.00	
190	Trainer J W	137.75	137.75
	Vincent N B	1443.10 1500.00	3755.85
	Vallicatt O J	344.00	352.60
	VanHallen Fritz	50.00	
	Weekly C L	31.50	
	Webber Jacob	27.50	
	Wolf Wm	150.00	
	Warner Geo W	391.67 1204.37	1910.84
	William A	47.00	
	Wheeler W S	45.00	
	Westerberg H E	14.50	
	Chas W Whitney	185.12	185.12
	Watson R H	1508.76	1925.60
	Young E P	500.00 500.00	726.98

191 I kept the Loan and Discount Register most of the time; sometimes Miss Burton entered the notes. Miss Burton was assistant cashier of the Bank; the Loan & Discount Register is correct, as to the amounts and names. It was kept by me or under my direct supervision, and most of the work up to December 1, 1894, was done by me. The book was kept this way: the next morning, for instance after the day's business, we would take the notes and enter them, or sometimes in the evening before we left.

Testimo Rand

It was necessary to examine twenty pages of the Loan and Discount Register to make up this statement, and I presume there were about forty or forty-five items on a page.

Plaintiff here offers in evidence the Loan and Discount Register, marked exhibit III.

As to the indebtedness of Burton & Harvey as shown by the book or memorandum under date of December 1, 1894, to the bank, there is nothing appearing here in the name of Burton & Harvey, but M. F. Burton had a note of $5,000. M F Bur-
192 ton was a sister of George W Burton, and assistant cashier of the bank. George W Burton had two notes, aggregating $4447.50; A H Burton had two notes aggregating $1290.30. A H Burton was the wife of George W Burton, the president of the bank. Mr Harvey had one note for $4553.01, and another note for $543. My notes were in the bank for $3,900, $2,900 of which was for Burton & Harvey and the other $1,000 was put in by Mr Burton, a note I gave him for stock. I did not get anything for the note I put in for $2,900, it was simply an accommodation note; I mean by that that it was put in for the accommodation of Burton & Harvey. I cant say at the time that it was done whether they requested me to do it
193 or whether I volunteered to do to help them out. I did not object, any way, at the time, to doing it. It was said that it was only to be temporary, it was not to remain long. I cannot give the exact date when I first put my notes in the bank; it was prior to the sale of the stock to the Deweys, I know that, because they were told that those notes were Burton & Harveys, and I am inclined to think it was some time during the year of 1891, or the latter part of 1890, but I can't be sure of that. I retired from the bank July 1st, 1895, and they were then taken out of the bank. I could not say as to whose notes were put in the bank in place of them. They were taken out after I went out of the Bank; a few days after that the notes were handed to me by Mr Burton. I find in examining the Discount Register that the two notes were taken out at dif-

of J. A.

ferent times, a couple of days apart as I remember it, and the same day one was taken out there was one put in signed by Mrs
194 Burton, I think it was, and when the other was taken out there was one put in signed by C B Harvey, but I dont know which one went in first of those two, and of course I don't know that they took the place of my two notes that came out. Simply that they went in the same day. The amounts of the two together I think was the same as my notes. C B Harvey is Mrs Harvey, the wife of A E Harvey. As to the other notes of Burton & Harvey in the Bank, there was a note in there signed by Mr Hovey, for $1200. P E Hovey. I always understood that that was really Burton & Harvey indebtedness, although the
195 note was kept up by Mr Hovey himself, and was arrranged from time to time by him, I remember of sending him notes myself to be signed by him and his wife. I have forgotten her initials, but they always signed them and returned the notes to me, or to the Bank, and I returned the old ones. I cannot tell the exact date when that note dropped out without going through and looking it up. It was not in there when the Bank failed. There is a note in there for about the same amount—that of W B Price. I do not know who W B Price was, except that
196 he was the Insurance Deputy last year. As to whether he was a clerk in Mr Harvey's office at that time I would not like to say; I was not in the State at the time that transaction took place. As to other indebtedness of Burton & Harvey in there, the Inter-State Loan & Trust Company had a $5,000 note that was always signed by Mr Burton. It was signed Inter-State Loan & Trust Company by George W Burton, President. Mr Burton was president of the Inter-State Loan & Trust Company and also president of the Bank. Part of these notes had been
197 in the Bank for a long time prior to December 1 0894. I believe there was at one time, the latter part of 1891, a time neither Mr Burton nor Mr Harvey had a personal note in the Bank. I think there was one time that all their individual paper, personal paper, was taken out; that is when the stock was sold I think, but the Inter-state Loan & Trust Company note—no that was not taken out at that time. That remained in. Mr Harvey was a stockholder in the Bank until the Fall of 1891. He sold his stock to the Deweys. I do not know how his particular stock was transferred, whether to C P Dewey or A B Dewey or part to each; I dont know how as to that, but it went in in that deal.

I was pretty well acquainted with the liabilities of Burton & Harvey in a general way December 1 1894 or prior to that

198 and knew pretty well the different items that went to make up the liabilities, but would not want to say now what the different items are, it has been so long ago. I could not state what the liabilities of Burton & Harvey were, not now without having something to refresh my memory; it would be a mere guess at this time and might not come any where near it. Taking for instance the liability of George W Burton, President of the bank. He had a loan of $12,000 on his home farm, and how much of this represented here was his individual liability I could not say, except as is shown here in his name. And the only other item of personal liability that I can recall of his now, and I am not so awfully sure of that, I think I am, though, was a note he owed to C H Smith of Hartford. Whether there was any more than that I could not say. That was $2500.

199 As to the indebtedness of Burton & Harvey, or the individual indebtedness of each of them to C P & A B Dewey, I dont know. I know that C P & AB Dewey advanced them money to take up some of their indebtedness, and it seems to me that one item was McShane & Condon, Omaha, and it seems to me that was about $10,000 but I am not sure of that amount. I think they took up notes of theirs at the United States' National Bank and advanced the money for that, and I have an impression that they advanced the money to take up a note with the Capital National Bank soon after it failed or about that time. Those three items are all I can recall now, and if the McShane & Condon was $10,000, it must have aggregated about $16,000 because I think the other two were about three thousand dollars each. I know the Deweys advanced them large sums of money to take up some of their indebtedness but whether there was any other I cannot recall at this time. As to what security and how much property of Burton & Harvey was pledged to the Deweys for the payment of this, there is something about which I had a misunderstanding at the time it was done, but subsequently it came out that the real estate that was turned over by Burton & Harvey to the Deweys, in the name of C P Dewey as trustee, I think it was, after the first liens had been satisfied, was to go to the liquidation of their indebtedness to the Deweys. My impression at the time was a little different, but I got this latter impression from A B Dewey. I got my impression at the time from Mr Burton. He told me the Bank was to come in ahead of the Deweys.

200 Q. Is it not a fact that practically all the property of Burton & Harvey and of them individually, was made over to C P & A B Dewey to secure their indebtedness to those people?

of J. A.

A. Why, it was not my understanding that all of it was. There was considerable turned over in the way of first mortgage coupons for the advanced interest and second mortgages, commission mortgages, and now I am under the impression that for quite a while the income from these went to the payment of the Burton & Harvey's indebtedness to the Bank. There was quite a large overdraft at one time and as those collections came in, as I remember it now, they were placed to the credit of Burton & Harvey to reduce that indebtedness to the Bank. The overdraft I have reference to was about the first of January, 1893, and was somewhere from $5,000 to $7,000, I would not
201 like to state positively without looking it up.

Q. Was the home farm ever deeded to either C P or A B Dewey, this farm on which there was $12,000? A. It was deeded; I don't know about the warranty in it, but either as individuals or to C P Dewey as Trustee.

Q. What is the significance of the word trustee; trustee for Trustee for what? A—I never read the deed and do not know whether the trust was mentioned in the deed or not. I dont remember that I ever read that deed. It was in my possession however. The deed was put on record. There was a deed put on record and I think perhaps it was the same one.

Mr Harvey's homestead was also deeded to C P & A B Dewey, and some California property also; these other deeds were in my possession, but this California deed never was. It was my impression, and I got it from Mr Burton himself, that
202 he had some land in California and that it was deeded to them also.

I dont know whether those notes of Burton & Harvey to the Deweys were signed by their wives, and by M F Burton and A M Burton or not. I guess that was a private matter between those parties, and they were signed I think by Mr Burton and M F Burton his sister, but whether any of the rest of not I could not say as to that.

Burton & Harvey owed something to Mr Porter, a party in New Hampshire, the amount of which I could not state although I knew it at the time.

203 There was also some indebtedness to the United States National Bank, but that is the one I think that Mr Dewey advanced the money to take up.

Q—Were the Burtons or Mr Harvey, or any of them on any depository bonds, to secure the payment of any money that was deposited in the Bank? A—Mr Burton evidently was, the only bond I ever knew anything about was one he made to the County.

204 I dont know the amount of that, possibly $10,000 or $20,000, but I don't think Mr Harvey's name was on that bond. It was signed by M F and Mr Burton.

Q—Had Burton & Harvey, or they individually, endorsed any first mortgage paper which they had sold? A—I dont think they ever guaranteed any, to my knowledge they never guaranteed loans that they made.

I believe they had sold and endorsed some second mortgage paper, I dont know how much. They held quite a large amount of second mortgage paper. Some of that was put up with the Capital National Bank and some with the United States National Bank, but these were returned when the notes were paid, but I don't remember of their putting up any of this anywhere else. They got quite a little money out of them, they would have been worth quite a little more if they could have managed the first mortgage with them, that is where they lost a great deal. When the first mortgage was foreclosed it let them out. Mr Moore of Lincoln had most of the first mortgages, and it let them out.

I dont know what was done with the stock of George W Burton that he owned in the Bank. I think possibly the Deweys held some of it as collateral. I think he always kept 10 shares there. I remember Mr Dewey did have some of the stock. M
205 F Burton held, I believe, $10,000 of stock in the Bank. A H Burton held no stock I think, unless it was possibly $1,000.

The reason George W Burton allowed this note to run along through all those years was because he simply didn't have the means with which to pay it till it came due anyway. This note I found as I went through did not come into the Bank until, as I remember it, 1892 sometime. He was pretty heavily involved during that whole period. As to his management of the Bank, his business methods generally, that would be just my opinion. I want to say this, to start with, that I believe that while Mr Burton had some peculiar business methods, he
206 was honest. I do not think he would wilfully beat any body, and whatever he done there that might not appear to be in a straight line of Banking, I think je did it because in his own mind it would improve matters: I think it is true that it really grew out of his desire to financially advance the condition of it. He worked hard and was anxious to pull the Bank through, and he was just as anxious to save the people who had entrusted money with him. I do not know what he was indicted for; I only know that by hearsay. I understood that he was indicted by the United States Grand Jury. I was not a witness before the Grand Jury.

of J. A.

Mrs M. F. Burton had in her own name unincumbered, De
1, 1894, this stock in the Bank and her home in Orleans. Th
is the only thing I think. At that time there was no mortga
on that home. It was her home there in town. I do not rec
just now that A H Burton had any property. I think she ha
some stock, but I would want to look that up before I woul
be positive. It seems to me there was $1,000 in her name.

At that time I myself had lost pretty near everything I ha
207 Prior to that I had considerable; I had a home there in O
leans, I had some equities in some lands yet, but it all went bu
the home.

As to the homestead of M F Burton, she is still living ther
She had a very nice little place, only a small place, but it wa
worth I suppose, $1,000 to $1200. I sold one that was no be
ter, and a good deal further out, for $900.

Some of the other directors of the Bank, for instance, Patri
208 Gibbon, owed the Bank at that time. A party by the name o
Dumlay had a note of $3,145.90, and Mr Gibbon himself owe
$2,000. As to Mr Gibbon's financial condition at that time
prior to that he had been in excellent financial condition, hi
credit was unlimited. He got caught in some railroad work tha
cinched him pretty badly, but I always considered Pat Gib
bon's paper perfectly good, he was not only a man of consid
erable business ability, but an honest man. His individual in
debtedness to the Bank was all paid; that $2,000 was all paid
unless possibly $500, when I left there. My impression is tha
he paid the last $500 just before I left. The note of $3145.90 o
Dunlay and Gibbon was not in the Bank when the Bank failed
it had been taken out, paid or something done with it. I don
know how that was settled. In the schedule made up of paper
in the Bank December 1, 1894, and when the Bank failed, I
did not include this Dunlay and Gibbon note. It It was not in.
209 The $3,145.90 was settled after I left there. We had two de
positors at that time who had large amounts; Mr Preston was
one; he had about $4500 I think it was, and M B Holland
the lumberman had quite a large deposit. As to whether this
Gibbon note was given in settlement of their deposit, I can
only answer by hearsay; I was told that Mr Holland took the
210 Dunlay and Gibbon note but Mr Holland did not tell me that.
Mr Hoffman was a director of the Bank at that time—J O Hoff
man. As endorser he owed the Bank $649.75, I think that was
the amount.

In making up my statements to the comptroller of the con
dition of the Bank from time to time, I did not schedule this

accommodation paper that was in the Bank for Burton & Harvey, I did not schedule that as being Burton & Harvey paper; I just took the notes as they technically appeared.

The bank at that time had the bank building. In the statement of assets that was put in at something over $13,000 I believe, between $13,000 and $14,000. The furniture and fixtures were separate, that was $2400, in that neighborhood. The building had been entered on the books before I went there, and we
211 carried it along at the same amount. I think there is no doubt that it cost the bank the amount represented on the books, but of course it was too expensive a building for that town, and what it would actually sell for December 1, 1894, it is pretty hard to tell. That was at a time when nothing had been raised in that country, about the only use the Bank building could be put to was banking, and if I had been going into the banking business there and wanted a building, I should not have wanted to pay any more than $5000, although it was worth a good deal more than that; it was a good building built of pressed brick, too good for a town like that, and would not have been worth to me for banking purposes over $5,000. The bank owned the lot on which the building stood. The trial balance gives the amount of other real estate that the Bank had exactly, somewhere in the neighborhood of $4,000 or $4,500, I never saw any of the real estate; there was 160 acres in Red Willow County, and 160 acres in Furnas County, and there was 160 acres in Phillips County, Kansas, to us that was afterwards charged off, after this statement I think; then there was a
212 lot in Holdrege and a lot in University Place, lot 4, block 15, I dont know where it is, and a lot in Beaver City.

In 1894 there was nothing raised in the country, practically nothing. In 1893 they had a better crop, it was not a full crop, but they had a fair crop in 1893. In 1895 they had a partial crop, it was short. There was a general severe shrink-
213 age in all kinds of property in that part of the country. It is a purely agricultural country, with no manufactures of any kind: all agriculture and stock. That was the year when relief was sent in from different states. There was some sent into that part of the country. There was no sale for property, practically, during the Fall of 1894, out there. Some people left the country. The great majority had grit enough to hang on. Some left, of course.

Whenever we thought it was possible we were using our best efforts to make collections on these notes that were in the Bank.

My salary as an employee of the bank was $85 per month.

of J. A.

I dont know how the other salaries run, we had a clerk there at that time, I think, yes, I am quite sure; his was $40; I
214 am uncertain now how Miss Burton was paid, I think her salary was $50; I am not sure whether the Bank paid all of that or the Bank part and Burton and Harvey part or Burton & Harvey paid it all, I have forgotten. The Bank did not pay Mr Burton anything. The salary expenses for running the bank per year would be perhaps over $2,000. I could not tell what the total expenses were. If any taxes accumulated against
215 the Bank it must have been later than December 1 1894. I think at that time one year's taxes were not paid, and if there was any unpaid at that time, it would be the 1893, and somehow I was under the impression that the 1893 tax had been paid, but I am sure that 1894 tax had not been paid when I left in 1895.

I think none of the Bank's assets were in the Capital National Bank when it failed. Oh yes, we kept an account with them, we had about $300 when the Bank failed. That of course was worthless.

As to the value of the fixtures, we had an excellent safe, when I was there they told me they paid $1,000 for it, and a bank counter that was a good one, and couldnt not have cost less than $750, possibly more. The counter etc had been put
216 in in 1885. I supose the safe was put in about that time. If someone wanted to start a bank they would get a good bargain by getting that safe and counter at $1500.

I left the Bank July 1, 1895. I became dissatisfied with the way the funds of the bank were being used. I did not feel safe in occupying the position I occupied. It seems to me I offered to stay if they would relieve me of the title of cashier. No, I guess I didn't either. Mr Burton kept drawing on the Bank funds to pay his private debts and interest that was owed by Burton & Harvey to Eastern creditors. I was unable to con-
217 trol that, but I had a good many talks with Mr. Burton; as I said awhile ago, I think he thought it was for the best, but I could not see it that way, and resigned my position. I did not feel as safe after I knew that C P and A B Dewey had disposed of their stock, because I felt that as long as they would stay by it I knew they were men of considerable means, and I was not as well satisfied after they withdrew as I was before, and I didn't know anything about the new stockholders at all. They were strangers and I didnt know whether they had any money or not. I will say this, that I always had a good deal of confidence in C P Dewey, especially.

December 1, 1894, I think C P Dewey had two certificates of $1,000 each, in the neighborhood of $5,000 the two of them,
218 I think A B Dewey had three certificates of $1,000 each, so it made in the neighborhood of $5,000, on deposit there. They sent that out there for deposit. I think we paid eight per cent interest on it. While I am sure they sent it because they thought the Bank could use it to advantage, it yet was not sent in the nature of a loan. It was sent to be placed on deposit. I am sure that C P Dewey never made any demands for collateral
219 or any securities for these certificates. Later on A B Dewey did. That was some time in January 1895. A B Dewey was there at that time, looking over the bills receivable and assets of the Bank, and he at that time demanded collateral. There were some notes turned over to him at that time as collateral. Notes of individual parties. I dont remember whose all of them were. He selected one signed by Mr Young; he made
220 a mistake in that, because it was not paid afterwards. Another I think was the note that was signed by Mr Ferguson and Mr Hoffman and I think Mr Haywood. Another note I distinctly remember, which he afterwards would not send and the party wanted to pay, was Mr Richmonds, and then a number of smaller notes, I cant recall them now. These notes were listed and a record made of them, but I have not been able to find them. That book is not among the books that the Receiver has, as far as I can find. It is not customary in banking parlance, in the due course of business to hypothecate collateral for
221 depositors. I dont remember whether the comptroller or bank examiner were advised by the bank that this collateral had been hypothecated to pay A B Dewey's deposit or not. It was not done at that time. I don't believe there was an examiner around after that time up to the time I left. I dont think we made any report on any loans to the Comptroller. We always put up collateral when we got money, from the Chemical National Bank, for instance.

Q. You did not treat this as a re-discount? A. No sir,
222 or now wait. I know I had that account up with Mr Burton at the time. I thought we better transfer that from the deposits and call it bills payable. And I don't remember whether we did it or not. I am inclined to think we did not. There was a question about it in my mind however. I thought it would be better to do that, as the collateral was out. We were paying other depositors six per cent.

The Bank was not paying dividends in January 1895. I am not sure that we paid any dividend after January 1893.

of J. A.

I could not tell. My impression now is that in 1894 we
pay any dividend at all. That is my impression, that we
pay any dividend after 1893. From December 1 1894
July 1 1895 our deposits were individual deposits sub
check and certificates of deposit. There was not much
in public funds, up to that time. We carried up to Jul
We only had money when I left there, from the county
223 had $4351 on June 27. That is the last work I did
books, $4351 from the county treasurer. That is the only
money we had. There were demand certificates $12,0
and time certificates $9076.98. I dont think we paid a
terest on these demand certificates at that time. The
of the Bank was to carry everything almost as deman
tificates and pay interest if left for a certain length of
I believe these Dewey deposits were demand certifica
dont believe they were payable at a certain time.

Q—Why were they favored over other certificates. Wh
they paid interest at eight per cent when other demand
cates were not paid anything? A—Well, I don't know.
is a pretty hard question to answer. Of course they s
money out during the year 1893, when all banks needed
pretty badly, and rates of interest of course were high
1893 than at any other time. Yes, I think it was in 189
sent the money out there, or early in 1894.

Before I went out Mr Burton had a scheme in his h
224 denationalize the bank and reorganize it as a state bank
he was working on that, and I think the Bank had been fo
time prior trying to interest his brother, J M. Burton.

December 1, 1894, there ought to have been with proper
agement somewhere over $20,000 to $25,000 collected.
could too. The balance of course were doubtful. Some of
were worthless.

December 1, 1894, just at that particular time, and not
might have been done later,—it is not my opinion that i
at that particular time there had been an attempt ma
realize and force the collection of the Bank's paper and
up the affairs of the Bank, it is my opinion that it would
225 paid out; if it had been taken in hand by some one wh
some interest in it, and looked after it carefully, with the a
of money on hand and the amount of notes that seem to
been paid afterwards, I believe the depositors could ha
most been paid. Certainly the bank could not have paid
diverting the funds of the Bank into other channels. Of
I was speaking of taking of what ought to have been re

and applying it on the Bank's indebtedness, and I believe the depositors could almost have been paid. There was something like $5,000 on hand at that time, available and in bonds in circulation and five per cent of the redemption fund and a little premium on bonds that ought to have been realized and what we ought to have gotten out of the notes and out of the other assets it seems to me might have been managed so that the de-depositors might have been paid. Because it was not managed that way was largely why I left the Bank. The fact that these notes were in the Bank some of them long prior to December
226 1, 1894, and all of them in there December 1, 1894, and also in there when the Bank failed, is conclusive as to the insolvency of the makers of these notes, as to their ability anyhow to make collections out of them. A great many of these were just simply renewed because I knew they could not pay it. Some of them of course I knew were not good. The interest was added to some of them from time to time, I guess. I could not remember any particular note, but there were some. Where we find "paid in the Loan and Discount Register, that doesnt indicate that they were paid, nor that they were renewed. It simply means that they were either paid ir renewed on that date.

Page 227.

Cross-Examination of Mr. Randall.

I know that these parties were carried on the books for a number of years, but as to their financial standing I would have to have an individual ca[illegible] As for Pat Gibbon, for instance, he was carried there for [illegible]; his note went in the Bank in
227 1891 and his individual [illegible]tedness was paid in 1895. He gradually reduced it however. I always thought he would pay, and I didnt think because that note had been in the Bank a long time it was a bad note. The same was true of Dunlay Brothers. However, I do not believe that a note that is renewed year after year with the interest added would be called a very good note. If the interest even is paid it would help it, or if it could be reduced occasionally a little.

228 As to the liability of Mr Burton, it was confined to the amount of money on deposit, certainly; the only bond that had been given up to the time I left there was to the county and that was about $4,000, we had no deposit.

There were about 1400 acres in the home farm I think. It was near the town of Orleans, part of it joined the town site.

of J. A. The buildings were right at the head of one of the streets. It is pretty hard to tell what the farm would have sold for. Of course Mr Burton held it at something like thirty or thirty-five dollars an acre, but I think to take the place all over that
229 twenty or twenty-five dollars would have been at the outside a fair price for it, for the entire tract. It would not have been enough of course for the forty acres where the buildings were, but some of it further out would not be worth so much. A tract was sold west of Orleans for about thirty-seven dollars per acre. The land that Mr Wallis got was 120 acres, where the house stood, that joined the town on the west. This farm had a good farm house; there was the main dwelling and a dwelling for a tenant, a small one.

This loan or deposit in the Capital National Bank was made in March 1893, and not after Mr Dewey had sold his stock.

It Is Hereby Stipulated and agreed by and between the parties of this action that a certified copy of the reports of the First National Bank of Orleans to the comptroller of the currency made during the years 1894, 1895, and 1896, be admitted as evidence in this case and marked as exhibits.

230 The Plaintiff offers in evidence a certified copy of the examination of the First National Bank of Orleans made February 28 1894 by J. M. Griffith National Bank Examiner.

A copy of said report is hereto attached marked exhibit 112.

f G. M. on. G M LAMBERTSON of lawful age being by me first duly examined, cautioned and solemnly sworn, testified as follows, viz:

I am the attorney for the con plainant in this case, I am
231 acquainted with James H Eckels formerly comptroller of the currency at Washington D. C. and have seen him write his signature and have received a great many letters from him and I think I know his signature when I see it. I have in my hand a number of letters which were delivered to me by P O Hedlund formerly receiver of the First National Bank of Orleans, which were written to the First National Bank of Orleans or to its officers by the comptroller of the currency. One of these letters is dated July 2 1892, and is signed by R M Nixon deputy and acting comptroller of the currency. I am not acquainted with Mr Nixon's signature.

Letter of July 2 1892 offered in evidence as exhibit 113. Exhibit Lette 2, 18

"Address Reply to
"Comptroller of the Currency."
Washington, D. C.

Treasury Department,
Office of the Comptroller of the Currency,
Washington D, C.

July 2, 1892.

Mr. G. W. Burton,
President, First National Bank,
Orleans, Nebr.

Sir:—

The report of an examination of your bank, made on the 18th ultimo, has been received.

The following loan appears to exceed the limit prescribed by Section 5200, U. S. R. S.:—

Overdraft, Burton & Harvey,	$1,722.57	
G. W. Burton, notes	4,978.70	
Cash items	213.25	$6,914.52

This loan should be reduced to the lawful limit as soon as practicable.

The examiner reports that the above account has been overdrawn for the past thirty days. It should be made good, and this practice should be discontinued.

Overdue paper is reported amounting to $4,940.41, of which $832.16 is classed as "bad debts", as defined by Section 5204, U. S. R. S. Such of the overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension. The "bad debts", unless satisfactorily arranged in the meantime, should be charged off prior to declaring a dividend.

The examiner reports that you carry an account of $150 as due from the Treasurer of the U. S. This appears to be fore some of your own circulating notes which were forwarded by mail to Mr. Burton on one occasion when he was away from home, and which were lost or stolen. This account should be charged off.

The examiner reports that your records show that only four meetings of the board of directors have been held during the year, and he states that your discount and examining committees are not active.

It is respectfully suggested that the conduct of the affairs of a national bank are by law devolved upon the board of di-

rectors and regular and frequent meetings are therefore very desirable.

Respectfully yours,

R. M. NIXON
Deputy and Acting Comptroller."

4— July

I hold in my hand a letter dated July 5 1893 signed by James H Eckels, comptroller of the currency, addressed to J A Randall First National Bank Orleans. The genuine signature of Mr Eckels is attached to said letter. I offer said letter in evidence as a part of the records of the bank, letter marked exhibit 114.

"Comptroller of the Currency,
Form 513.

Treasury Department,
Office of Comptroller of the Currency.
Washington, D. C., July 5/1893.

Mr. J. A. Randall
Cashier, First Nat'l Bank,
Orleans, Neb.

Sir:

Upon examination of your report of condition on May 4/93 it is found that the "loans and discounts upon which officers and directors are liable" amount to $28,836.71 out of total loans and discounts of $82,158.47

While recognizing the right of directors and officers to borrow within the limitations of law and safety, the Comptroller must insist most rigidly that directors and others connected
235 with the bank in this fiduciary relation shall not avail themselves of the easy opportunity afforded them to borrow beyond this limit, either directly or indirectly, the funds intrusted to their keeping, in order to carry on enterprises outside of the banks with which they are connected.

Officers and directors should remember that the funds held by banks are in a large measure funds of others held in trust for the safe-keeping thereof, and, as trust funds, ought not to be loaned to the trustees of such funds, except upon the very best collateral or other security.

In the matter of accommodations to them, directors and officers should be placed upon the same footing as other customers of the bank, except that their financial ability and standing should be the more rigidly scrutinized for the reason that they act in the dual capacity of lenders as well as borrowers.

The continued experience of this office is that such loans in

many instances result disastrously to all concerned, and therefire the danger attending upon such a course ought not to be risked. The Comptroller must insist that this condition of affairs be remedied with the least possible delay, by reducing the amount of these accommodations to safer and more reasonable limits.

Please bring this communication to the immediate attention of your board of directors for consideration, and request them to unite in making a prompt reply over their individual signatures.

Respectfully yours,

JAMES H. ECKELS.

Comptroller."

I hold in my hand a letter dated October 10 1893 and offer said letter in evidence as a part of the records of the Bank, marked exhibit 115. Exhibit Lette 10, 1

"Address Reply to

"Comptroller of the Currency",

Washington, D. C.

Treasury Department,

Office of the Comptroller of the Currency,

Washington, D. C.,

October 10, 1893.

Mr. G. W. Burton,

President, First National Bank,

Orleans, Neb.

Sir:

The report of an examination of your bank, made on the 24th ultimo, has been received.

It appears from the report that a large proportion of your loans and discounts is made upon single name paper without other security.

Overdue paper is reported amounting to $10,118.08 of which $1,994.64 is classed as "bad debts" as defined by Section 5204, U. S. R. S. Such of the overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension. The "bad debts" unless satisfactorily arranged in the meantime, should be charged off prior to the declaration of a dividend.

The examiner reports a discrepancy of $100 in your certificate of deposit register. This discrepancy should be reconciled as soon as practicable.

Please bring this communication to the immediate attention

of your board of directors for consideration, and request them to unite in making a prompt reply over their individual signatures.

Respectfully yours,

GEO. M. COFFIN
Deputy and Acting Comptroller."

Aug. I hold in my hand a letter dated August 2 1894 . . . purporting to be signed by George M Coffin deputy and acting
237 comptroller. I do not know the signature of Mr Coffin. This letter is offered in evidence as exhibit 116.

"Address Reply to
"Comptroller of the Currency."
Washington, D. C.

Treasury Department,
Office of the Comptroller of the Currency,
Washington, D. C.,

August 2, 1894.

Mr G. W. Burton,
President, First National Bank,
Orleans, Neb.

Sir:—

The report of an estimation of your bank, made on the 23rd ultimo, had been received.

Overdue paper is reported amounting to $12,758.54 of which $3,522.57 is classed as "bad debts" as defined by Section 5204, U. S. R. S. Such of the overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension.

The examiner estimates that the following losses have either been sustained by your bank or are probable, viz:

"Bad debts"	$1,659.43
Other overdue paper	2,000.00
238 Banking house	3,266.44
	$6,925.87

As your surplus and net undivided profits at the time of the examination amounted to only $5,986.21, it would appear that your capital is slightly impaired, and no further dividends can be declared by your association until all losses have been charged off, and the impairment of capital made good. See Section 5204, U. S. R. S.

4. Lawful money reserve deficient $3000 and the average during the thirty days preceding the examination only about 2%.

Exhibit 1
Letter
2, 1894

Your attention is respectfully called to section 5191 R. S. which forbids national banks to increase their liabilities by making any new loans or discounts while there is a deficency in the required reserve. Your association is hereby notified to make good its lawful money reserve in accordance with the provisions of the above mentioned section. Please inform me when this has been done.

5. Two tracts of real estate acquired in 1889 and '91 respectfully to secure debts previously contracted.

Your attention is respectfully called to section 5137 R. S. which provides that a national banking association shall not "hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years."

6. Five and six per cent interest paid on certificates of deposit.

It is respectfully suggested that the payment of interest upon deposits is not in harmony with the principles of sound commercial banking and that the future policy of your bank in this respect be gradually changed.

7. Certificate of deposit for $2,800 issued to A. B. Dewey of Chicago for money borrowed. In the opinion of the Comptroller uses of certificates of deposit for this purpose is not proper and should be discontinued.

8. In connection with the above, it appears that your records do not show any authority from the board of directors on account of this liability to Mr. Dewey.

The implied power of a national Bank to borrow appears to be vested in the board of directors, and all liabilities of this character should be authorized by them.

9. The following losses appear to have been sustained by your bank or are probable, viz:

"bad debts"	$ 238.65	
Other loans and discounts	7,704.20	
Premiums on U. S. Bonds	167.75	
Banking house	260.44	
Furniture and fixtures	424.81	$8,795.85

As your surplus and ned undivided profits at the time of the examination amounted to only $2,363.34, it would appear that your capital stock is impaired. No dividends can be declared by your association until all losses have been charged off and the impairment of capital made good. See section 5204 R. S.

10. In your last report of condition of this office, July 14th,

16—of Aug. cash items, aggregating $1,239, were classified as legal tenders. An explanation of this is desired.

11. The records show that your directors have held but one meeting this year.

It does not appear that the directors can fulfill the obligations imposed upon them by law and their oaths of office unless meetings are held regularly and at least once a month. Please see that the board in future gives the affairs of the bank the attention they require.

You are respectfully referred to sections 5136, 5145, 5146 and 5147 R. S., prescribing the powers, qualifications and duties of directors, and to section 5239 making directors personally liable for losses sustained by reason of violations of law committed or permitted by them.

Please bring this communication to the immediate attention of your board of directors for consideration, and request them to unite in making prompt reply over their individual signatures.

Respectfully yours,

GEO M. COFFIN.

Deputy and Acting Comptroller.

17—of March 4. I hold in my hand a letter dated March 23, 1894, ... and the signature is the genuine signature of James H Eckels.

Letter of March 23rd offered in evidence as exhibit 117.

Address Reply to
Comptroller of the Currency,
Washington, D. C.

Treasury Department,
Office of the Comptroller of the Currency,
Washington, D. C.

March 23, 1894.

Mr. Geo. W. Burton,
President, First Nat'l Bank,
240 Orleans, Neb.

Sir:—

The report of an examination of your bank, made on the 28th ultimo, has been received.

The following loan appears to exceed the limit prescribed by Section 5200, U. S. R. S.:—

Dunlay Bros. $5,145.

This loan should be reduced to the lawful limit as soon as practicable. Please inform me at an early day the reason for

this violation of the statute, and also what you know with regard to the standing of the borrower. Exhibit 1 Letter 23, 189

Overdue paper is reported amounting to $13,668.38, of which $3,100.06 is classed as "bad debts" as defined by Sec. 5204, U. S. R. S. Such of the overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension.

The examiner reports that the following losses have either been sustained by your bank, or are probable, viz:

"Bad debts"	$2,800.
Other overdue paper	5,000.
Stocks, securities, claims,	250.
	$8,050.

As your surplus and net undivided profits at the time of the examination amounted to only $6,142.18, it would appear that your capital is impaired and no further dividends can be declared by your association until all losses have been charged off and the impairment of capital made good.

The examiner reports that your bank has issued certificates of deposit for $8000 borrowed of C. P. Dewey, Chicago. Whenever certificates are used for the purpose of borrowing money they are bills payable and should be so reported. In my opinion, however, the use of certificates of deposit for the purpose of borrowing money is not proper and should be discontinued.

The examiner reports that John A. Randall gave his note in payment for ten shares of the capital stock. He is therefore disqualified to act as a director and the vacancy should be filled by appointment by the remaining directors as prescribed by Sec. 5148, U. S. R. S. A blank for oath of director is enclosed.

It appears from the report that your bank holds real estate which was acquired in 1888 for a debt previously contracted.

Your attention is respectfully called to Sec. 5137, U. S. R. S., which provides that,—

"No such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years."

The examiner reports that you have no active discount nor examining committee, and that your board of directors meets only twice a year.

It is respectfully suggested that the conduct of the affairs
241 of a national bank is by law devolved upon the board of di-

rectors, and regular and frequent meetings are therefore very desirable. Your board should meet a month at least.

Please bring this communication to the immediate attention of your board of directors for consideration, and request them to unite in making a prompt reply over their individual signatures.

Respectfully yours,

JAMES H. ECKELS
Comptroller.

18—of Oct. 3.

242 I hold in my hand a letter . . . dated October 3, 1894, . . . and the signature is the genuine signature of Mr. Eckles. Letter introduced in evidence as exhibit 118. This letter, as well as all the letters following from the office of the Comptroller, like those preceding, bear the heading: "Address Reply to "Comptroller of the Currency," Washington, D. C. Treasury Department, Office of the Comptroller of the Currency, Washington, D. C." Each letter is address to "George W. Burton, President First National Bank, Orleans, Nebr."

October 3, 1894.

Sir:—

Your letter of August 22, in answer to office letter of August 2, have been received. Please bring office letter referred to, to
243 the attention of the directors and see that reply thereto, signed jointly by the members of your board, is made without further delay. Very respectfully,

JAMES H. ECKELS
Comptroller.

19—of April 5.

I hold in my hand a letter dated April 27 1895 to which is attached the genuine signature of James H Eckles. Letter introduced in evidence, and marked exhibit 119.

April 27, 1895.

Sir:—

The report of an examination of your bank made on the 12th instant has been received, and the following matters reported therein appear to be subject to criticism or comment:—

1. Lawful money reserve deficient $1,267 and your average reserve for thirty days preceding the examination was only 13%.

Your attention is respectfully called to Section 5191, U. S. R. S. Stats., which forbids national banks to increase their
244 liabilities by making any new loans or discounts while there is a deficiency in the required reserve. Your association is here-

by notified to make good its lawful money reserve in accordance with the provisions of Section 5191, U. S. Rev. Stats. Please inform me when this has been done. Exhi Le 27

2. Real estate acquired in 1889 for a debt previously contracted and a real estate mortgage taken the same year to secure a debt previously contracted.

Your attention is respectfuly called to Section 5137, U. S. R. S. which provides that,

"No such association shall hold the possession of any real estate under mortgage or the title and possession of any real estate purchased to secure any debts due to it for a longer period than five years."

3. A large proportion of your loans and discounts is made upon single name paper without other security.

4. Overdue paper $7,843.86 of which $196.69 is charged as "bad debts", as defined by Section 5204, U. S. R. S. Such of the overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension.

5. The following losses appear to have been sustained by your bank or are probable, viz:—

"Bad debts"	$196.69
Stocks, securities, claims, etc.	257.93
Banking-house	3,266.44
Furniture and fixtures	911.51
	$4,632.57

As your surplus and net undivided profits at the time of the examination amounted to only $2,252.59 it would appear that your capital is slightly impaired, and no dividends can be declared by your association until all losses and expenses have been charged off and the impairment of capital made good. See Sec. 5204, U. S. R. S.

6. It is not unlikely that there made be considerable loss upon your loans and discounts which it appears to be impossible to estimate.

7. Your records do not show any authority from the board of directors for the liabilities of your bank on account of bills payable.

The implied power of a national bank to borrow money appears to be vested in the board of directors, and all liabilities of this character should be authorized by them.

8. The vacancy in your board of directors should be filled by appointment by the remaining directors as prescribed by

Section 5148, U. S. R. S. A blank for oath of director is enclosed.

245 9. No discount nor examining committee and your board of directors does not hold regular meetings.

It is respectfully suggested that the conduct of the affairs of a national Bank is by law devolved upon the board of directors, and regular and frequent meetings are therefore very desirable. Your board should meet at least once a month.

Please bring this communication to the immediate attention of your board of directors and request them to unite in making prompt rely over their individual signatures.

Respectfully yours,

JAMES H. ECKELS.
Comptroller.

I have in my hand letter received from P. O. Hedlund . . . dated October 12, 1895, and is signed by A. P. Tucker, act-
246 ing comptroller, . . . I never saw Mr. Tucker write his signature, but I have received from the Comptroller a number of letters written by him and I think I know his signature and in my opinion this signature A. P. Tucker acting Comptroller of the Currency, is genuine. Letter introduced in evidence as exhibit 120.

October 12, 1895.

Mr. Geo. W. Burton,
President, First National Bank,
Orleans, Neb.

Sir:

The report of an examination of your bank made on the 25th ultimo has been received, and the following matters reported
247 therein appear to be subject to criticism or comment:—

1. Loan exceeding the limit prescribed by Section 5200, U. S. R. S.

A. E. Harvey	$4,996.01	
C. B. Harvey (his wife)	1,900	$6,896.01

This loan should be reduced to the lawful limit as soon as practicable. Please inform me at an early day the reason for this violation of the statute, and also report what you know in regard to the standing of the borrower.

2. Lawful money reserve deficient $1,066 and your average reserve for thirty days preceding the examination was only about 10%.

Your attention is respectfully called to Section 5191, U. S.

Rev. Stats., which forbids national banks to increase their liabilities by making any new loans or discounts while there is a deficiency in the required reserve. Your association is hereby notified to make good its lawful money reserve in accordance with the provisions of Section 5191, U. S. R. S. Please inform me when this has been done. Exhibit Letter 12

3. A large proportion of your loans and discounts is made upon single name paper without other security.

4. Overdue paper $7,904.94. Such of this paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension.

5. Real estate acquired in 1889 for a debt previously contracted.

Your attention is respectfully called to Section 5137, U. S. Rev. Stats., which provides that,

"No such association shall hold possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it for a longer period than five years.

6. From five to eight per cent. interest paid on certificates of deposit.

It is respectfully suggested that the payment of interest upon deposits is not in harmony with the principles of sound commercial banking, and that the future policy of your bank be gradually changed in this respect.

7. Your earnings during the past year have been only slightly in excess of expenses.

It is thought that about $10,000 of your loans and discounts are of somewhat doubtful value, and no dividends should be declared by your association until all losses have been determined and charged off. See Section 5204, U. S. R. S.

8. Your account with the Chemical National Bank, New York, N. Y., has not been reconciled in several months. This matter should have your attention.

9. The vacancy in your board of directors should be filled by appointment by the remaining directors as prescribed by
248 Section 5148, U. S. R. S. A blank for oath of director is enclosed.

10. No discount nor examining committee and your board of directors has held only two meetings this year.

The conduct of the affairs of a national bank is by law devolved upon the board of directors, and regular and frequent

meetings are therefore very desirable. Your board should meet at least once a month.

Please bring this communication to the immediate attention of your board of directors for consideration, and request them to unite in making prompt reply over their individual signatures. Respectfully yours,

O. P. TUCKER,
Deputy and Acting Comptroller.

I hold in my hand a letter received from P O Hedlund, Receiver, which bears date February 15, 1896, to which is attached the signature of A P Tucker, deputy and acting comptroller. I know it to be his genuine signature.

Letter is introduced in evidence, marked exhibit 121.

February 15, 1896.

Sir:—

250 The report of an examination of your bank made on the 6th inst., has been received, and the following matters reported therein appear to be subject to comment or criticism:

1. Loan exceeding the limit prescribed by Section 5200 U. S. R. S. viz:

G. W. Burton (Prest.)	$4,475.54	
" " " checks in cash items	1,373.00	$5,848.45

This loan should be reduced to the lawful limit as soon as practicable as it contravenes the statute relating to excessive loans.

2. Lawful money reserve deficient $2,800 and your reserve has been very low since the date of the previous examination.

Your attention is respectfully called to Section 5191 U. S. R. S. which forbids national banks to increase their liabilities by making any new loans or discounts while there is a deficiency in the required reserve. Your association is hereby notified to make good its lawful money reserve in accordance with the provisions of Section 5191 U. S. R. S. Please inform me when this has been done.

3. Real estate acquired in 1889 for debt previously contracted.

Your attention is respectfully called to Section 5137 U. S. R. S. which provides that,

"No such association shall hold the possession of any real estate under mortgage, or the title and possession of any real

estate purchased to secure any debts due to it, for a longer period than five years."

Exhibit 1 Letter 15, 189

4. Overdue paper $33,027 of which $1,675 is classed as "bad debts" as defined by Section 5204 U. S. R. S. Such of the overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension.

5. The following losses appear to have been sustained by your bank or are probable:

Bad debts	$ 582.85
Other overdue paper	2,000.00
Other loans and discounts	3,000.00
Banking house	1,000.00
Furniture and fixtures	1,000.00
Other real estate and mortgages	500.00
Cash items	500.00
	$8,582.85

As your surplus and net undivided profits at the time of the examination amounted to only $1,960.56, it would appear that your capital is impaired.

Under these circumstances, it will become my duty, under Section 5205 U. S. R. S., to levy an assessment on your shareholders to make good the impairment of capital, unless you can show some good reason why this should not be done.

6. Six to eight per cent interest allowed on deposits.

It is respectfully suggested that the payment of interest on deposits is not in harmony with the principles of sound commercial banking, and that the future policy of your bank be gradually changed in this respect.

7. The cash items contain your personal checks for $640 and $733 respectively, which have been so carried for several months. These should be charged to the proper account at once.

8. The members of your family owe the bank in all about $14,000 and your former cashier owes the bank $4,996.

The Inter-State Loan and Trust Co., has a loan of $5,000 and there is about $937 in interest coupons on second farm mortgages taken by the firm of Burton and Harvey and guaranteed by said firm. The above indebtedness should be reduced to more prudent and reasonable limits as soon as practicable.

9. Your board of directors held only two meetings last year.

The conduct of the affairs of a national bank is by law devolved upon the board of directors, and regular and frequent

meetings are therefore very desirable. Your board should meet at least once a month.

Please bring this communication to the immediate attention of the board of directors for consideration, and request them to unite in making prompt reply over their individual signatures.

Respectfully yours,

O. P. TUCKER,
Deputy and Acting Comptroller.

122— of March 0.

I hold in my hand a letter which I received from P O. Hedlund Receiver of the First National Bank of Orleans, dated March 23, 1896, to which is attached the genuine signature of James H Eckels, Letters offered in evidence and marked exhibit 122.

March 23, 1896.

Sir:—

Your letter of the 4th instant, signed by other directors, and letter of the 10th instant, are received and have careful attention.

In reply you are respectfully informed that the matter of making an assessment to make good the apparent impairment of capital, will be held in abeyance until another examination of your bank has been made in regular course. In the mean-
252 time, therefore, the directors should make every effort to collect or better secure such assets as are regarded as worthless or of doubtful value, in order that the necessity for making an assessment may be obviated by the time such examination is made.

Should it be concluded to place the affairs of your bank in voluntary liquidation, the comptroller will consent to this only on the condition that you can furnish satisfactory evidence of the ability of your bank to pay off or otherwise liquidate its liabilities to depositors or other creditors.

The examiner reports that you have no discount committee, and that your records show meetings of the board of directors only twice a year.

It is respectfully suggested that t' · conduct of the affairs of a national bank is by law devolved upon the board of directors, and regular and frequent meetings are therefore very desirable. An early reply to this letter is requested.

Respectfully yours,

J H ECKELS,
Comptroller.

I hold in my hand letter dated August 10, 1896, which is Exhibit Letter 10, 18
253 signed by A P Tucker deputy and acting Comptroller. The signature to this letter is the genuine signature of A P Tucker.

This letter is here offered in evidence, and marked exhibit 123.

August 10, 1896.

Sir:—

The report of an examination of your bank made July 30, has been received and the following matters therein reported
254 appear to be subject to criticism or comment:

1. Loan exceeding the limit prescribed by Section 5200 R. S., viz:

Geo. W. Burton (president) $5,686.75

The above mentioned loan, as well as the accommodations to M. F. Burton and the Inter-State Loan and Trust Co., should be collected or materially reduced without further delay.

2. Overdue paper $9.298 of which $2,802 is classed as "bad debts" as defined by section 5204 R. S. Such of this paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension.

3. A large proportion of your loans and discounts is made upon single-name paper without other security.

The examiner reports that your records show that the board of directors meets only twice a year.

It is respectfully suggested that the conduct of the affairs of a national bank is by law devolved upon the board of directors, and regular and frequent meetings are therefore very desirable. Your board should meet once a month at least.

Please bring this communication to the immediate attention of your board of directors for consideration, and request them to unite in making prompt reply over their individual signatures.

Respectfully yours,

O. P. Tucker.

Deputy and Acting Comptroller.

I hold in my hand a letter dated January 8, 1897, to which is attached the genuine signature of James H Eckles Comptroller of the Currency, . . . which was handed to me by P O Hedlund Receiver of said Bank.

Said letter is offered in evidence, and copy attached to record as exhibit 124.

24—
of Jan. 8,

January 8, 1897.

Sir:

The report of an examination of your bank made on the 29th ultimo has been received, and the following matters reported therein appear to be subject to comment or criticism:

256 1. Loan exceeding the limit prescribed by Section 5200 U. S. R. S.

G. W. Burton	$6,172.71

This loan should be reduced to the lawful limit without further delay as it contravenes the statute relating to excessive loans.

2. Lawful money reserve deficient $3,104 and your average reserve for thirty days preceding the examination did not exceed 3 per cent.

Your bank has not had the required amount of lawful money reserve at any time since the previous examination, and unless it is made good within thirty days from the receipt of this letter, the penalty provided by Section 5191 U. S. R. S. will be enforced.

3. The large amount of single name paper held by your bank should be secured by collaterals, or good endorsements obtained, if possible.

4. Overdue paper $9,131 of which $3,557 is classed as bad debts as defined by Section 5204 U. S. R. S. Such of the overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension.

5. The following losses appear to have been sustained by your bank or are probable:

Bad debts	$ 850.00
Other overdue paper	$2,505.00
Other loans and discounts	8,000.00
Stocks, securities, claims etc.,	200.00
Banking house	1,000.00
Furniture and fixtures	1,000.00
Other real estate and mortgages	500.00
Cash items	500.00
	$14,555.00

Your surplus and net undivided profits at the time of the examination amounted to only $2,083.43 and your capital is therefore seriously impaired.

Under these circumstances, it will become my duty under Sec-

tion 5205 U. S. R. S. to levy an assessment on your shareholders to make good the impairment of capital, unless you can show some good reason why this should not be done. Exhi Le 189

7. Loans and discounts short $126.59. This discrepancy should be reconciled without delay.

8. Real estate acquired in 1889 and 1891, for debts previously contracted. This real estate should be disposed of as soon as practicable as it is now held in violation of Section 5137 U. S. R. S.

9. Among your cash items are the following:

G. W. Burton	$ 555.00
Burton & Harvey	1,102.26
Burton	40.00
Farrell	9.98

These items are irregular and should be charged to the proper
257 accounts at once.

10. Your report of condition made October 6, 1896, shows legal tender notes $2,396 while your tellers cash book shows only $978 of legal tender notes on that date.

11. Your published statement of December 17, 1896, shows legal tender notes $2,596 while the teller's cash book shows only $325. Please explain these discrepancies.

12. Your board of directors held only one meeting last year, and took no part in the management of the bank.

It does not appear that the directors can fulfill the obligations imposed upon them by law, and their oaths of office, unless meetings of the board are held regularly, and at least once a month. Please see that the board in future gives the affairs of the bank the attention they require.

You are respectfuly referred to Section 5136, 5145, 5146, and 5147 U. S. R. S., prescribing the powers, qualifications and duties of directors, and to Section 5239 making directors personally liable for losses sustained by reason of violations of law committed or permitted by them.

Please bring this communication to the immediate attention of your board of directors for consideration, and request them to unite in making prompt reply over their individual signatures.

Respectfully yours,

JAMES H ECKELS
Comptroller.

I hold in my hand a letter dated February 5, 1897, att
Feb. 5. to which is the genuine signature of James H Eckels, C
255 troller of the Currency; this letter is introduced in evi
and marked exhibit 125.

Feb. 5, 18

Sir:—

Your letter of the 29th ultimo, signed by two other dire
replying to office letter of the 8th ultimo, is received an
had my special consideration.

In reply you are respectfully informed that on Marc
1896, the matter of levying an assessment upon your
holders to make good the impairment of capital stock was
poned until another examination should be made, and
recent examination shows no improvement in the conditi
the bank since that time it does not appear that it is po
to restore the bank to a prosperous condition without an
ment. The impairment of capital has existed since 189
your bank has been the subject of continuous criticism
1885 on account of violations of law in the matter of exc
loans and real estate held, and the generally extended con
of its business.

In 1885 you were advised that the better plan would
place the bank in voluntary liquidation, and this still see
258 be the wisest course to pursue if it can be accomplished.

The Comptroller fully realizes the co dition of affairs
ing in the locality in which your bank is situated, and has
disposed to be as lenient as possible consistent with du
granting time to place your bank in better condition, but
spite of repeated promises no improvement appears to
taken place, a notice of an assessment of $12,500 is en
herewith to make good the impairment of capital; also
for certifying to this office when such assessment has
paid in.

In order that the assessment may be collected withi
three months time prescribed by law, the directors should
receipt of this notice see that each shareholder is promptly
fied as to the amount which he will be required to pay
order that they may be in a position at the end of the
months to sell the stock of any delinquent shareholder to
good his proportion of the assessment, under the provisio
Sec. 4, Act of June 30, 1876, if this should become nece
Please acknowledge receipt of both these papers.

Please bring this communication to the immediate att

of your directors for consideration, and request them to unite in making a prompt reply over their individual signatures.

Respectfully yours,

JAMES H ECKELS
Comptroller.

I hold in my hand an order assessing the capital stock of the First National Bank of Orleans, of the date of February 5, 1897, $12,500, to which is attached the signature of James H Eckels, Comptroller of the Currency, and the seal of the Comptroller of the Currency. I know the signature attached to this order to be the genuine signature of Mr. Eckels. Exhibit Order 189

This order is offered in evidence, and a copy attached to the record marked exhibit 126.

Washington, D. C., February 5, 1897.

Whereas, It appears to the satisfaction of the Comptroller of the Currency that the capital stock of The First National Bank, Orleans, Nebraska, . . . has become impaired to an ex-
260 tent which makes necessary an assessment of Twelve Thousand, Five Hundred ..... Dollars, ($12,500.00) upon the shareholders of said association to make good such deficiency;

Now, Therefore, Notice is hereby given to said association, under the provisions of Section 5205 of the Revised Statutes of the United States, to pay the said deficiency in its capital stock by assessment upon its shareholders, pro rata, for the amount of capital stock held by each; and if such deficiency shall not be paid, and said bank shall refuse to go into liquidation, as provided by law, for three months after this notice shall have been received by it, a receiver will be appointed to close up the business of the association, according to the provisions of Section 5234 of the Revised Statutes of the United States.

In Testimony whereof, I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the City of Washington, and District of Columbia, this 5th day of February, A. D. 1897.

JAMES H ECKELS,
[SEAL] *Comptroller of the Currency.*

To the First National Bank, Orleans, Nebraska.

I hold in my hand a letter dated February 19, 1897, which
259 I received from the former receiver of the First National Bank of Orleans, and to which is attached the genuine signature of James H Eckels.

The letter is offered in evidence, and a copy of the same attached to the record as exhibit 127.

Feb. 19, 1897.

Sir:

The report of the last examination of your bank shows that it had on deposit an amount of public funds.

The experience of this office is, that such accounts have been more a source of loss than profit to the banks in your State, by
261 reason of a too free use of the funds in the business of banking, these transactions appearing to be more of a political nature than a commercial one, and being subject to sudden and large withdrawals occurring at a time when the banks are least able to meet such demands.

Besides being subject to large withdrawals, these deposits usually bear interest at a high rate, such rates being offered as an inducement to deposit such funds with the bank, thereby causing it to take risks to enlarge the earning capacity of the bank which would not otherwise be assumed, and which are not readily convertible when any sudden demand is made.

In view of past experience I desire that you strengthen your reserve in order to meet such demands as may be made, and that the paying of interest on such accounts in the future be discontinued as far as possible, as this is not in harmony with the principles of sound commercial banking.

The directors of your bank are respectfully urged to thoroughly discuss this matter, and when they have reached a determination I desire them to unite in making a prompt reply over their individual signatures.

Respectfully yours,

JAMES H. ECKELS.
Comptroller.

I hold in my hands a letter dated March 10 1896, addressed to the Comptroller of the Currency, signed by George W Burton. I know Mr Burton's signature and know that his genuine signature is attached to this letter. Exhibit 1 Letter c 10, 189

This letter is introduced in evidence, and copy attached to record marked exhibit 128.

Geo. W. Burton
Counselor at Law
and
Negotiator
of
Mortgage Loans

Geo. W. Burton,
President.
Answered
Mar 23 1896
Reports Div

M. F. Burton,
Ass't Cashier.

Office Comptroller
Mar 16 1896
of Currency

First National Bank.

In reply to yours of .....

Orleans, Nebraska, March 10, 1896.

I.

Comptroller of the Currency,
Washington, D. C.

Dear Sir:—

263 Herein find a statement of the condition of this bank at the close of business 28th ult. It will be noticed that we are below the reserve and have been of late, but our individual deposits are so largely from our state and county treasurers, with whom we have a verbal understanding that we are not checked upon until crops are checked upon and times improve, that we do not feel unsafe with our present margins and it is not easy for any banks in this locality to borrow in times like these. When I wrote you in reply to your letter of 15th ult. regarding the examination of this bank made on the 6th ult. I probably should have explained more fully than I did. Relative to paragraph 5 of your letter of 15th ult. I would say that I do not now remember how the examiner arrived at his estimate of losses. In fact I am not certain that he explained it to me and I rather think that he did not explain to me the estimate which he has given to you. At any rate I do not think it is correct. What is put down in his report and also in the enclosed report as bad debts are mainly good and only technically bad. Our banking house, furniture and fixtures stand on our books at exactly what they cost and I have previously offered to satisfy you by certificates or affidavits of the contractor who put up the building and the house which supplied the furniture that they cost exactly what our books show. I do not think it at all necessary or desirable that our stock holders should

28—
of March
96.

be assessed as suggested, for the reason that those resid
here would undoubtedly not be able to pay their assessme
as, owing to repeated droughts and crop failures, times
very hard and it is exceedingly hard for anyone to raise mo
no matter how great their responsibility may be. As I
plained to you in my last letter, it is our intention this y
and probably within a very few months to consolidate w
this bank one or the other of two banks located near he
or, if this is not done, then we intend to denationalize
bank and reduce its capital stock. I think it is most likely
we will denationalize as this town is so small that the busi
does not justify us in using $50,000 capital in our Bank
business. If we choose, we could no doubt effect the consoli
tion some time after the denationalization and thus to a
siderable extent get rid of competition in our business.
or the other of these two changes, and most likely the de
tionalization, will be effected as soon as a fine farm of
acres, located in KanKakee County, Illinois, and owned b
near relative of mine, who is likely to become a stock hol
in this bank, is sold. The sale of farm is now being figured
It is located in a section of the country where farms sell read
265 I regard it as foolishness to use $50,000 capital in a bank
a small town having, like this one, less than 1,000 people,
this bank never would have been a national bank had it
been supposed that the town would have grown more and
surrounding country made much better progress and develo
faster than they have done. I fully explained these plans
ours to the bank examiner when he was here last month
he seemed to approve of them.

Yours truly,

GEO. W. BURTON

Dictated.

---

of J. A.
(re-

JOHN A. RANDALL, Recalled.

262 *Examined by Mr. Lambertson.*

I frequently sent C. P. Dewey and C. P. and A. B. De
statements as requested, those statements being copies of
trial balance. . . . . .

From the end of 1892 there was a gradual decrease in
posits. From perhaps January 1892, . . . they gradu

266 decreased down to the time I left. For some time they stood in the neighborhood of $35000 to $40000 possibly but they had decreased from, I think at one time we had from $75000 to $80000. Testimony (Randall called)

When I went out in July 1895 the stock was held by Geo W Burton, M F Burton, ten shares in the name of John B Burton I think; I am not sure as to A H Burton; I am under the impression there was ten shares in her name, ten shares owned by Dr Hoffman and ten shares owned by Pat Gibbons, and the balance was owned by eastern parties to whom the Deweys' and Mr. Hogg had sold or transferred there. . . . C. M. Hogg lived at Cadiz Ohio. He was a brotherinlaw of the Deweys. C M Hogg transferred his stock December 26 1894. It was issued to him December 4 1891.

C. P. and A B Dewey were out to the annual meeting in January 1892 and did not return until January 1893 at the
267 annual meeting. Sometime that fall, late in the Summer or fall, August or September, I think, C P Dewey and Mr Hogg were there. Mr Hogg was also there at the meeting in January 1892 and at the January meeting in 1894 I think C P & A B Dewey were there. Neither of them was there at the annual meeting in 1895; I refer to the annual meeting of the stockholders. At each annual meeting when the meeting of the stockholders adjourned the directors elected at that time would meet and elect officers. I don't remember that A B Dewey ever attended a meeting of the Board of Directors, except at such times as that. A minute book was kept of those board meetings, but whether or any others, I hardly think there was. There were not frequent meetings of the Board of Directors.

When I went out of the Bank, I have forgotten whether Geo W Burton owned $10,000 or $12,000, either the one or the other, either 100 or 120 shares; M F Burton owned 100 shares,
268 and I think there was yet in the name of John W Burton that same 10 shares. I think that was all. . . . . .

Those deeds to land by both Mr Burton and Mr Harvey were made to C P & A B Dewey when they were there attending the annual meeting in January 1893. Later on, immediately after the failure of the Capital National Bank, about February 1, 1893, they came out again, and at that time there was turned over to them as collateral all second mortgages, and I guess it was at that time that they took the deeds to the
269 lots, of George W Burton. He had a lot of lots there in Orleans. Those deeds were not put on record at the time they

y of J. A. were taken. They were not put on record until possibly six
l (re- months afterwards. My recollection is it was in August some time that C P Dewey and Mr Hogg came out and at that time they put the deeds on record. I understood that they were not to be recorded when they were given. The putting on record was a surprise to Mr Burton and to myself. Mr Harvey was in Lincoln at the time. The putting on record of the deeds didn't seems to have any particular effect on the Bank, except to affect my nerves to a considerable extent. I was expecting that it would, but it didn't seem to cause any particular stir. The Bank was apprehensive of a run on the bank; I would not have been surprised if there had the next day, and Mr Burton was very uneasy himself.

Q. Were those deeds made over to the Deweys, C P and A B Dewey, transfers of their collateral as trustee for these
270 lands, or also for the Bank. A. The understanding I had I got from Mr Burton when the transaction was first made, and that was that after the first mortgage was satisfied the proceeds from any sales should go to the liquidation of their indebtedness to the Bank. I so understood that until I guess nearly two years after than, when A B Dewey was there, and he insisted that their lien was second and ahead of the Bank's lien. The collateral, however, I am quite sure about that, that was the second mortgages, were anyway, until a large overdraft was paid off—was to go to the liquidation of that—was to go to the credit of Burton & Harvey on the Bank books, and after that I really do not know what ever was done. We kept in the Bank a collection account into which was put collections of that collateral; I made a list of all of them.

Q. And as collections were made it went into that collection account for the benefit of the Deweys? A. No, it was another account I was thinking about. I made a list of all of these, made what might be called a collection register, but as these second mortgages were collected during the year 1893, anyway, they were placed to the credit of Burton & Harvey to pay off the overdraft that they owed the Bank. That is my recollection of it.

Q. And after that overdraft was paid all moneys that came in from that collateral were forwarded to C P and A B Dewey? A. The fact is I don't think there was any left after that overdraft was wiped out. I don't know that there was ever
271 enough collected to wipe that out.

Q. Isn't it true that some land was deeded to the Deweys by Burton and Harvey, that that land was sold from time to

time and the money sent to C P and A B Dewey? A. There Test
272 was a tract sold a man by the name of Wallace, 120 acres, and A.
I think he made one or two payments on that. Where that cal
money went, I would be unable to state, unless the records would show something about it. There were only I think about $800 or $900 paid in all on that tract and the tract was forfeited. He could not pay out on it.

At the time I left the Bank the certificates of deposit of C P and A B Dewey had not been paid. I think A B Dewey never presented his for payment, that is, there were never formally presented. There was one of C P Dewey's presented, that was in the spring of 1895. There was one of his for $1,000 presented. It was presented by the agent of the Express Company at Orleans. It was sent for collection through the Express Company. It was not usual for C P Dewey to send collections of any kind due them either by the Bank or others, by Express. Before that they had been sent in the
273 usual way by mail to the Bank. The agent of the Express Company, Mr Holder, had a certificate amounting to about $800. He presented his certificate and drew the money before he presented Mr Dewey's. He afterwards told me that when he received that, he though the best thing he could do would be to take his money out.

The public at that time had never been informed in any way, I don't think, that the Deweys had disposed of their stock. Up to that time, that was a large amount of letter heads and they were the same. Not their names, but C P Dewey's name; I believe A B Dewey's never did appear on any of our stationary.

At the time Mr Hogg and C P Dewey came out there I dont think they went over the paper of the bank. A B Dewey and C P Dewey did so in 1893. I do not know that they han-
274 dled the paper but they took the loan and discount register and went over that, where we listed the notes. They looked it up to see against whom we had notes, the amounts etc. They made inquiries as to whether the notes had been paid etc. Mr A B Dewey was there alone in January 1895. At that time he was through, especially the larger notes, the Bills Receivable and Assets of the Bank and examined them. That was in January 1895, soon after the meeting of the stockholders; neither of them were there that year at the meeting of the stockholders. Mr C P Dewey was not present then. Mr Morlan examined the paper with him at that time—W S Morlan.
275 An attorney from McCook was there with him and went over

J. A. the paper. I don't know anything about any conversation between Mr Morlan and Mr A B Dewey. Of course I did not hear anything of any conversation between them. I don't remember now anything Mr Morlan said to me, but any way he said to me that Mr Dewey had wired him to meet him at Oxford, and he did, and I got the impression, and I think he told me in so many words, that he had advised him that he had better get out, get out of the Bank. That investigation was made for the purpose of getting at the value of the assets of the Bank, as I understood it, both from Mr A B Dewey and Mr Morlan. They went through the note case and selected
276 out, in fact went over all the notes and made a memorandum of the larger ones such as Mr Morlan knew about himself.

At that time Mr Dewey had ten shares of stock in the bank. He had previously transferred the other to the Shufelts. I understood one of the Shufelts was a brother-in-law and I think the other was a mother-in-law. I understood they were relatives of A B Dewey. January 11, 1895, Mr A B Dewey
277 surrendered that certificate. He surrendered that and it was put in the name of John M Burton. John M Burton was not there, and did not know of that transfer to him at that particular time.

Q. You may state whether or not it was your understanding and memory that that transfer was made for the purpose of getting out of the bank and trasnferring all the stock he had in the Bank, that transfer of A B Dewey? A. I guess I could not state definitely his object for doing that but I can only state
278 this, that he insisted on this being done, but I could not state as to the object. He insisted on its being done at that time, after the examination of the paper of the Bank. It was done the same day. I do not know what the consideration was for that transfer. No settlement was made by John M Burton for the stock. I am quite sure there was no settlement between John M Burton and Mr Dewey. I mean Geo W. The arrangements for the transfer of them at that time were made with George W Burton without the knowledge of John M Burton. At that time John M Burton lived in Kansas. He was not present at that time in Orleans.

Q. Now will you kindly look over the list of the Bills Receivable that you prepared that were in the Bank December 1,
279 1894, and give an opinion as to the solvency or insolvency of the parties and the collectability or uncollectability of the several notes. A. We had part of these yesterday, the Burton & Harvey notes. I find one against a man named Beem for

$1,705. I do not think Mr Beem at that time was considered very good pay. I cannot recall now whether that note was in the Bank when I went there in 1889 or not but it seems to me it was, I would not want to say positively, but it had been in the Bank some considerable time. At that time I do not think the note could have been collected. There was one time when this party was considered good, several years before this. That that was in the Bank when the Bank failed.

There is $32.75 against a man by the name of Bowen. He
280 afterwards left the country and it became uncollectable. I had some in there myself that was not paid. I think $2,000, it amounted to $3900. I had another one for $296. It was in two notes, that is the total of the two, one of them I have since taken care of. That note hadn't been in there so very long before I left there. When the Bank failed it had been in perhaps three years. When the Bank failed I had no property out of which it could have been collected.

There is Fritz Brocker who had $55 in the Bank; a part
281 of that note I am quite sure was paid; A M Cramblet had $82.40, I think the Receiver collected part of that; George W Cook $54.25, I don't think that was paid; F J DuBois had $58, E F Dyer $14.80. I never considered that DyBois note very good, however I think he made two small payments on that after the Bank failed. . . . Dyer I don't remember. J H Day had $15. These amounts are the amounts at the time the Bank failed. December 1 1894 the amount of these, Beem's $1,705, my own $250, Brocker $77.45, Balcom I think was collected by the Receiver December 1894 $15, when the Bank closed $11.60; Cramblet December 1, 1894, $80; Cook $59.50; DuBois, $54.50, Dyer $13.85; Day $40, H Deubendfer had $111.90 December 1, 1894, and when the Bank closed, $170. Part of that note was collected. He paid part of it to the Receiver, two small payments if I am not mistaken.

In 1897 when the Bank failed, times were a good deal better than in 1894. They had good crops out there.

I always thought the Cramblet note would be paid, however, it was not. I thought the Fritz Brocker would be paid. Cook
282 was always doubtful in my mind as well as DuBois. Dyer and Day I do not remember. This man Dubendfer—well his note increased; I was quite sure he would pay that.

The next one I find is Finley, December 1, 1894, he had $172.70 and when the Bank failed $214.45; I was always a little doubtful about that note, and yet he was an honest man and I think would have paid if he could. He went out there

J. A. and invested in some land and lost it all. Here is a note against two parties, Farrell and McDough. I used to think these notes were good, and would have been paid if the parties could but at that time they could not have been collected. The amount of these notes December 1, 1894, $1,169.20; the same notes when the Bank failed amounted to $2,589.65. These notes could not have been collected on execution. We tried to collect them, especially those two. We kept trying to get in some money on them, but were not successful.

The next I find is John A Gahley, $261 in 1894, $140.60 when the Bank failed, I always thought that good. Gillilan
283 $400.10 in 1894, $420.10 when the Bank failed. I never considered that note good. J M Hiatt $45 December 1, 1894, and that had increased to $199.75 when the Bank failed. That note was practically worthless. Hedman $100 December 1, 1894, and the same amount when the Bank failed. That note I always considered good and it was.

Here is Haywood and others. Haywood himself had $200. I thought that would be paid. There was still $79.50 I believe when the Bank failed. $649.75 was in the name of H T Fergson when the Bank failed; that was a note signed by Mr Haywood, Doctor Hoffman and Mr Fergson. That note ought to have been collected; Mr Fergson, I take it, was perfectly good, Doctor Hoffman until these judgments were obtained against him.

I note up there a note of A E Harvey of $243 December 1, 1894, and $4,996 when the Bank failed. That is just above Haywood's Christ Herald $55.65 December 1 1894, $60.25 when the Bank failed. That note became uncollectable. Patric Joyce $37.50, and when the Bank failed $45. That was not very good. William Jennings $20 in 1894 and when the Bank failed $18.25. Jennings is a laboring man there. The note might have been paid under execution. I don't know whether he ever paid it or not. He was an industrious man and an honest man. He had a little home there in Orleans which was mortgaged.

W H Joyce I can't place at all, he had $31 December 1894,
284 and $43 when the Bank failed. That was practically worthless. Another Joyce $22.70 in 1894 and $27.20 when the Bank failed. I don't remember him.

S B and M J Kirkpatric had a note of $1,056.85 in 1894 which had increased to $1,387.55 when the Bank failed. I do not know these parties; that had been in there for a long time; they lived in Furnas County somewhere. The note we never

considered good. I am under the impression that that note was in the Bank when I left there in 1889. Testimony Randall

Alex Longsine $51.40 and the same when the Bank failed.
4 Lester $77.45 in 1894 and he reduced that to $19.10. That note I always felt would be paid. Thomas Lorimer $600 and the same amount when the Bank failed. Mr Lorimer kept the interest up on his note but was never able to pay it. He was a merchant out there but he was always hard up. I suppose if we had made a levy on his stock of goods we could have realized on it. He could not have paid it otherwise without crippling his business worse than it was.

J T Lampson $175.65 which had increased to $222.20 when the Bank failed. When I left there I supposed that would be paid. He was formerly County Superintendent and it seems to me he owned a farm up in the northern part of that county but we had carried it along from time to time, sometimes he paid the interest and sometimes not. Lover, $9.50 and the same amount when the Bank failed. McNae, $934.70, in two notes, L A and $500 and Archie $485.50. That note I never considered very good. That note was taken in there through that paper deal and Mr Burton allowed the thing to be settled up without taking any mortgage on the newspaper outfit, and after he got it he refused to do that. McNae was running a newspaper office. McKerr, $563.37, which had increased to $861 when the Bank failed. That was practically worthless. Murdock, $62.30, increased to $175.10. That note was sold, but $62.30 should have been collected. I have made some collections since I came away, against the same party. Had some trouble, though, to get it. He lived up about Holbrook. That had been there quite a while. Mohn, 28.25 and the same amount when the Bank failed. That I always considered good, and believe it was afterwards paid. McCoy $56, had been reduced to $49.35, that note was all right, Mohr was all right, and I always thought the McCoy note would be paid.

3 Martin, $152.85, had increased to $193.85 when the Bank closed. I can't place that fellow. At that time, in 1894, I guess it would have been pretty hard to collect it. At one time he was good, but I guess at this time perhaps he had left there, and the chances were poor. Munson had $250. that had been reduced to $141. That note ought to have been collected all right. B D Mills, $2000, increased to $2197.50. December 1 1894 it would have been pretty hard to have collected that note, that has been verified, and I do not recall the time after that that he could have paid it.

ty of J. dall.

Neubauer, $1,387.15, and the same when the Bank failed. That note was in the Bank when I went there. I don't know anything much about this party.

It had been in the bank four or five years. I think possibly when this note was taken he was considered good. He was the man who had his mill washed away.

Neufelt, $33.43, it had increased to $47 when the Bank failed.

Here is the Orleans College, in 1894 $996.31, and at the time of the failure it had increased to $1286.55. This was really the Free Methodist Church and the deed was contracted when they built the school and at this time they had disposed of the school. I never thought we would get anything out of that note and subsequent events proved that I was about right.

287 Palmer $293.50 which increased to $337.65. The note was good and he afterwards paid it. Purdy $22 and the same when the bank failed. I asked why they didn't collect that Palmer note, at that time the note was good. I considered the note good, possibly at that time, December 1894 he could not have paid it without cramping himself. He met with considerable bad luck out there, but he was a plucky fellow and worked out of it all right. Prickett $267.30 which increased to $360. That man we always considered honest, but he was a pretty poor manager. I do not believe there was ever a time we could have forced collection of that note. Popert $31 which decreased to $20. I always thought that note was good. It was I guess too. This was not a firm. it was signed by individuals Proper and Watts, which was originally $659.56 and increased to $890.75. That has been in the bank some considerable time and I guess when it was put in they were all right, but at this time probably could not have paid.

John Quinn $33.08 which decreased to $10. We always thought that was good.

C A Roberson $108.60 which increased to $117.30. That note, while it was slow, yet I thought it would be paid, but I guess it was not. Rubattone a small note $10.60 which increased to $13.35. Russell $73.90 which had been decreased to $42.25. I always thought that Russell note would be paid. It was much larger than this at one time and he gradually reduced it.

Stowell $58.53 increased to $73.70. That note I do not
288 think was good. Simpson $52.15 increased to $56. That could not have been collected on execution. Simpson I think would

have paid it if he could have got the money. He was honest but whether he paid it I don't know. Stromsburg $55 reduced to $45. That was good. Scully $95 increased to $107.12. I do not remember who he was. H O Sitler $700 which remained the same up to the time the bank closed. I am quite sure that could not have been collected. Here is the state bank of Republican City. One note for $750. another for $1000. There was collateral security with that note. I have forgotten just when that was put in the bank. It had not been in there that time very long and it seems to me when I first went in it amounted to $2000. At this particular time I guess it would have hurried the bank to have paid it. Soon after that of course the bank was closed, perhaps six months after December 1 1894. I mean the state bank of Republican City, of which Mr Mills was president and Mr Whitney was cashier. C W W on this list which I have made means C W Whitney cashier. One of these notes was entered in the Bills Receivable Register "State Bank of Republican City" and the other "C W Whitney Cashier." That Bank failed six months, possibly, after that. . . . . Sometime in the summer or early fall of 1895. Testimony Randall

Thompson $16 reduced to $15.15 when the bank failed. I thought that note would be paid but whether it was or not I don't know. Thomas B. Thompson the next name is here but it should be Thomas $68.90 which increased to $136 that was
289 rather a doubtful note. J W Trainer $137.75 and the same when the bank closed. That in December 1894 was practically worthless. He had left the country.

N B Vincent. December 1 1894 he had notes amounting to $2943.10. When the bank failed they had increased to $37.55.85. These notes were worthless. They had been in the bank quite a long while. This note was in the bank when I went there. Twenty years ago he would have been all right I guess, but he was not at that time. O J Vallicott $344 which had increased to $352. That party, I don't know anything about his financial standing.

George W Warner $1596.04 in 1894 which increased to $1910.84. We were never able to make any collection on these notes. These notes were in the bank when I went to Orleans in 1889. Charles W Whitney $185.12 which amounted to the same when the bank closed. That note I think could not have been colected at either of these dates. R H Watson $1508.76 which increased to $1925.60 when the bank failed. Those

ay of J. A. 290 notes were not good. E P Young had two notes of $500 each
ell. December 1 1894 which he reduced to $726.98 before the bank failed. I cannot tell about this except December 1 1894 but I thought these notes would be paid. I am inclined to think both these notes were put up as collateral for the A B Dewey certificate. I think Mr Dewey selected those. We always considered them good paper and it seems to me they ought to have been collected. They afterwards failed but there was time enough between this time and the time they failed.

Witness dismissed.

It Is Hereby Stipulated and Agreed by and between counsel for Plaintiff and Counsel for Defendant that the reports of the
291 First National Bank of Orleans Nebraska to the Comptroller of the Currency for the year 1894, being dated February 28, 1894, May 4, 1894, July 18 1894, October 2, 1894, and December 19, 1894.

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Also the reports of said Bank to the Comptroller of the Currency for the year 1895, the same being dated March 5, 1895, May 7, 1895, July 11, 1895, September 28, 1895, December 13, 1895.

Also the reports of said Bank to the Comptroller of the Currency for the year 1896, the same being dated February 28, 1896, May 7, 1896, July 14, 1896, October 6, 1896, December 17, 1896,

Shall be admitted in evidence and be attached to and made a part of these depositions.

Certified Copies of said reports are attached to the record marked Exhibits 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143.

The plaintiff offers in evidence certified copy of the examination of the First National Bank of Orleans made July 23, 1894, by Loyal B. Howey, National Bank Examiner. A certified copy of the said report is attached to the record, marked Exhibit 144.

The plaintiff offers in evidence a certified copy of the examination of the First National Bank of Orleans made April 12, 1895, by Will C Stainsby, National Bank Examiner.

A certified copy of said report is attached to the record marked Exhibit 145.

The plaintiff offers in evidence a certified copy of the examination of the First National Bank of Orleans made September 25, 1895, by Loyal B Howey, National Bank Examiner, which copy is attached to the record in this case marked Exhibit 146.

It Is Hereby Stipulated and Agreed between counsel for Stip
198 Plaintiff, G. M. Lambertson, and Counsel for defendant, A. E. Harvey, that the certified copy of the original order of assessment upon the shareholders of "The First National Bank of Orleans" Nebraska, October 14, 1897, may be attached to and made a part of these depositions, without objection.

A certified copy of said order is attached to the record in this case marked Exhibit 147.

P. O. HEDLUND, being first duly sworn, deposes as follows: Test
(see page 5 of testimony of Hedlund and Harvey, taken before Miss Emma J. Hedges, Notary Public and Examiner in Chancery.)

My name is P O Hedlund, I live in Cheyenne County, Colorado, business Stock Grader, forty-four years of age. I was appointed receiver of the First National Bank of Orleans early in June of 1897 and served until the early spring of 1899. At the time I entered upon my duties as such receiver I made a schedule of the assets, and entered it in one of the books of the receivership. I first made a report to the Comptroller, a copy of which is in my book. When I gave up the receivership of that bank, I surrendered the books of the bank to Mr McDonald of Lincoln, who succeeded me as receiver of the Bank.

Q. Will you produce the receivership books in which is entered the inventory of the assets? A. Yes, sir.

Book is produced, being that identified as Exhibit 109 E J H.

This schedule is found on pages 1, 2, 4, 5, 6, 8, 9, 10. I en-
6 tered the list of the Bills Receivable of these assets in my own handwriting on these pages. I did it very shortly after I was appointed, perhaps within two weeks. This was done by direction of the comptroller of the currency. The instructions were to classify these bills receivable in three classes, good, doubtful, and worthless, which I did.

The plaintiff here offers in evidence pages 1, 2, 4, 5, 6, 8, 9, 10 of book marked Exhibit 109.

This list is only approximately correct, I had only a short time to make it in. It is not absolutely correct. Some are marked good that were worthless. . . . But the list of assets is absolutely correct. It is a matter of judgment. The total amount of those classified as good is $6,477,43. Of that

amount I collected $1,340.15. The large item in which I was mistaken was the Lincoln Salt Lake Company, which amounted in the aggregate to $5,000. That was placed in judgment, and the judgment is still in the possession of the receiver. It is of no value whatever. The amount of those classed as doubtful was $10,760.29. Of that I was able to collect $757.02. I want to correct my answer as to what I collected of those classed as good. It is $988.45 instead of $1,340. In that
9 $1,340 is included the proceeds of the sale of the Bills Receivable at auction. The total amount of the valuation placed by me on the assets which were classed as worthless is $48,061.79. This only covers Bills Receivable. There were other assets. Of the amount classed as worthless, I collected $77.10. These pages that have been offered in evidence show the amount of the payments.

In addition to these Bills Receivable, there were assets which were considered good by me consisting of Balance in the United States National Bank of Omaha $80.01, redemption fund in the hands of the United States Treasurer $562.50, Cash in Bank $102.03, Cash in the vaults of the Bank, an aggregate of $742.04, all of which I collected. There were the Bank building and some real estate, which comes under
8 some other assets which they listed under the head of doubtful; overdrafts, and receivers certificates against the Capital National Bank of Lincoln, the Bank building at Orleans, furniture and fixtures, and other real estate carried by the Bank on its books aggregating the sum of $20,536.36; of this amount I collected by collections from sale of property $1,813.44. The Bank building was carried and has been for years on the books of the bank at $13,260.44; furniture and fixtures $2,433.09; other real estate was carried at $4,560.88. The bills receivable that I was not able to collect were sold, in the last few days of December 1898, sold at auction to the highest bidder. Their face value was $60,000; perhaps a little in excess of that. I sold them at public sale, by order of the Comptroller, and realized something over $300. I realized for the bank building $2,550, and deducting the taxes, $1,673.19 was realized. There was no other real estate sold at that sale. I disposed of only one piece of real estate carried by the Bank; that was a lot in Beaver City; $111 I received for that. Including the excess above the bonds held by the Comptroller and all cash collected by me from sale, the collections amounted to $6,113.25,
10 on all the assets of the Bank while I was receiver, exclusive of money received on assessments made on stock.

We received on assessments ordered by the Comptroller Test
$1,290. paid by J and C Galbraith, an assessment of $1,500 H
of stock held by them. No one else paid. The assessment on
the stock was eight-six per cent. That assessment was ordered
and made by the Comptroller of the Currency in September
1897. I mailed to the stockholders a partly written notice of
11 assessment by registered mail. This was a copy of the order
of the Comptroller. I sent a copy of that order making an
assessment to both C P and A B Dewey. They did not pay.
I interviewed both of the Deweys. They claimed, of course,
that they were not liable and had disposed of their stock before
the failure of the Bank. I had a personal interview with them,
except C P Dewey. I didn't meet C P, I met his man Friday,
in the office, that attends to all his business. I met A B Dewey
several times. An assessment of $12,500 against the stock-
holders had been made two or three months before the Bank
failed, on this stock. Nothing was paid on that assessment
to me. I made no effort to collect on that. I investigated
and found that all the stockholders of the Bank were insolvent
and worthless. There must be two Galbraiths holding $1500
together. C. M. Hogg of Cadiz Ohio paid nothing.

12 Prior to the time I assumed my duties as receiver, I had lived
at Holdrege, 25 miles distant from Orleans, for a number of
years, back as far as 1876. I had a pretty fair knowledge of
the condition of things at Orleans, and of persons, a very good
one, for some years before the failure of the bank. . . . In
my opinion the Bank building December 1st 1894 wouldn't
have brought $2500; it would not have brought over $1500.
That is all the market value could be placed at. The fair
marked value of the fixtures in the building in 1894 was about
$250.

Q. In exhibit 133 of the deposition of J A Randall, being
the report of the condition of the First National Bank of Or-
13 leans, December 19, 1894, I find the following real estate
listed: Red Willow County, Nebraska, Susan Farley W D,
amount at which carried on books $1,154.65; amount of prior
lien $1,000; estimated actual value $2500; was that one of
the assets of the Bank at the time you went in as receiver?
A. Yes sir, and so far as I know, it still remains an asset of
the bank, if it could be called an asset.

. . . I visited the land, and in 1894 the fair market value
in my judgment of the land which is valued at $2500 wouldn't
be over $500. It wasn't worth more than $800, that would be
a liberal estimate on it in 1897 when I was there. Exclusive

of the mortgage there would be no value to it whatever. The mortgage was $1000 so that it was worth less than the mortgage. I received a small sum of rent out of this, but was unable to sell it at all. The mortgage was not foreclosed when I turned over the books. This is the piece that lays near McCook, if I am correct, and I am sure I am. I don't think it is foreclosed yet, it may be in process of foreclosure.

Q. I call your attention to one hundred and sixty acres in Furnas County Nebraska S 13 K W D, carried on the books
14 at $449.67; amount of liens $900; estimated at $2500; what in your judgment was the fair value of that property with the lien on it in 1894. A. I didn't visit that land, but from all the information that I could get from real estate men and others in Beaver City, where I went to inquire about it, it was not worth at any time the amount of the first lien; that is still carried as an asset under the head of real estate, but the equity in that had been extinguished quite a while before I turned over the receivership, and before the Bank failed in fact.

Q. I call your attention to another piece of land scheduled in the same report, 160 acres in Phillips County, Kansas, car-
15 ried on the Books at $992.97; amount of prior lien $800; valued at $2000; what if you know was the value of that? A. I have no knowledge of that land at that time, but investigated it at the time I had charge of it in 1897, and found that the supposed title to that land owned by the bank had been extinguished years before. They had no title to it. It has no value. It was never worth the lien.

Q. I call your attention to another piece of property scheduled in that report, lot 11, block 21, Holdrege, carried on the books at $1,105.90, estimated value $1500. Were you acquainted with the value of that property in 1894? A. Yes. I lived at Holdrege at that time, was in the real estate business there until 1892. As to the fair market value of that property, commencing with 1893 and 1894 and from that up to the present time $75 was all it was worth. I sold that property for $75 when I was receiver. There were $76 and some cents taxes against it, but the purchaser courteously paid that, he didn't come back with any back charges. There were taxes on all this property that I investigated.

Q. I call your attention to lot 1 block 7, University Place, carried on the books at $203.65, estimated actual value $300. Were you acquainted with the value of that property, say in 1893 and 1894? A. I was. It had no value.

16 I lived at Lincoln near University Place in 1893, 1894, 1895, 1896, and part of 1897. This belonged to the bank at the time I became receiver. I never realized anything from it.

Q. I call your attention to lot 4, block 15, Beaver City, carried on the books at $119.90; estimated actual value $600; were you acquainted with the value of that property in 1893 and 1894? A. Yes sir. It was worth about $100. I sold it for $111.

Whe I was receiver I had occasion to examine into these bills receivable as to the solvency of the makers, and so as to know in a general way how long they had been in the Bank. These bills receivable in the Bank had not changed except as to amounts, had not changed as to persons; they continued from 1888 to 1889 down without much change, down to the time of the closing of the bank. I know the majority of the makers of those notes, in fact nearly all of the large notes. I knew their financial standing, solvency and responsibility. I think not less than $50,000 of bad paper was carried there all the
18 time from 1891 or 1892 or 1890 possibly, up to the failure of the bank. That is, the makers were insolvent and the notes uncollectable. In a good many cases the interest was added to the paper or a new note given for the interest.

The principal makers of this paper were Burton and Harvey a real estate and loan agency that was run in connection with the bank. Their indebtedness one way or another, either direct or indirectly, amounted to from thirty to forty thousand dollars; then there was the Orleans College, that was carried for $1000 approximately, and quite a number of men whose paper had been there for ten or fifteen years, amounting to from $1500 to $2000, and even $3,000, and I am safe in putting the aggregate at over $50,000 of worthless paper, that had been worthless for many years. George W. Burton was the president of the Bank. A E Harvey is an attorney in this case, who lived at Lincoln at the time of the failure of the bank, 1894; he used to live at Orleans, and prior to that I knew him at Beaver City.

There was a banking firm known as Burton & Harvey, which
19 was known as the Harlan County Bank. Burton & Harvey were the managers and owners of it. Mr. Burton organized the bank and soon afterwards Mr Harvey was associated with him. Loaning money on real estate was the principal business of that firm. The First National Bank of Orleans was organized by Burton & Harvey, and Mr Harvey and Mr Burton

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at one time held the stock in the First National Bank of Orleans. I am not sure, but I think the Deweys bought Mr Harveys stock, A. B. & C. P. Dewey. In 1894 Burton & Harvey were insolvent. All of the indebtedness of Burton & Harvey was not taken in their own names in the Bank. It was in several ways, direct or indirect, in order to avoid the appearance of excessive loans. They carried in their names on
20 $5000, and then in their wives names perhaps they would have quite another big line, and then there were accommodation notes by such men as Mills and Price and Hovey, and there were others, the Kirkpatrick loan was also a loan of Burton & Harvey as well as the Nesbauer loan. These represent Burton & Harvey second mortgage interests in property that has been foreclosed by first liens, and directly and indirectly that was their indebtedness, aggregating a—Mr. Burton was president of the bank. As for Mr Burton's indebtedness, as to Burton & Harvey indebtedness, it is hard to separate them but George W Burton's and Mr Harvey's indebtedness com-
21 bined would be represented by George W Burton himself, A. E. Harvey, C. B. Harvey, wife of A E Harvey, A. H. Burton wife of George W Burton, and H. W. Burton father of George W Burton and Mr Hovey and Mr Price, and one item of second mortgage coupons amounting to nearly $1000, the Interstate Loan and Trust Company another loan of $5000, besides the Newbauer and Kirkpatrick paper I referred to, another which I cannot call to mind now. W. B. Price is a politician at Lincoln. At the time he gave his note he was a clerk in some office here I think. I think I have heard he was a clerk in Mr Harvey's office. He was of no financial worth or standing. I have heard Mr Hovey was a distant relative of Mr
22 Harvey's. Mr Mills is an old friend of Mr Burton's and Mr Harvey's down at Republican City. He was running a bank there. I think there was a $2,000 note of his there as an accommodation note. As to who received the money on that note, Burton & Harvey I am sure used it in their business. Answering the question: "Do you know in a general way how large the indebtedness was of Burton & Harvey, or of each of them individually," would say, near $40,000. I could not tell the aggregate amount to all persons. Mr Burton told me of course that was the only way I had learned, that they were involved and had indebtedness to C P Dewey and people in the East in which his brother John M Burton, had been involved and had to lose his farm, and things of that kind, showing a be

state of financial affairs running in connection with the firm of Burton & Harvey, and all connected with it at the same time. Neither Mr Burton or Mr Harvey owned or controlled any property that was unencumbered. Miss Burton, that is a sister of George W Burton, owned a home there at Orleans, which was encumbered. That was an indebtedness of George W Burton, or Burton & Harvey also, I could not say the amount, but for all the little home was worth, anyway.

23 Q. I will ask you to look at exhibit 110 of Mr. Randall's deposition, being a list of bills receivable, and found on page 186 of his deposition in the case of J W. McDonald Receiver against C P Dewey, which purports to show the amounts due the First National Bank of Orleans December 1, 1894, and which remained in the Bank at the time of the failure, and ask you to go over that list and state if you can, as far as you know, the solvency or insolvency of the different persons. The first column contains the list of tgose that were in the bank December 1, 1894, and the second column those that were in the bank when it closed. A. James Ayers is the first one, $14.75, which I collected. The next was J Bowen, that was worthless and had been for a number of years. W C Brown I know nothing about; it was not in the assets when I received them; V B Beem was worthless, and had been for a number of years prior to 1894; that was $1705. E J Byerman, $331.18, that was not in the assets, and I know nothing about it.

24 M F Burton, $5,000 note, was and had been worthless for a number of years. Also $279.50 by George W Burton, listed as $307, when I received the assets of the Bank, together with his $4,168, which still remained at the same sum when I took the assets. That was and had been worthless for a number of years. A H Burton, $1149.80, the wife of George W Burton, was still in the assets when I received them, and was worthless, as was the note for $140.50 which was $154 when I received them. That was the same maker, and also worthless.

The note of H W Burton, the father of George W Burton for $1,000 stood at the same sum when I received the bank, and it was and had been for a number of years, worthless.

H. E. Brown, $37.70 appears to have been paid, as also that of M Bischoff for $100.

C A Ball $282.95, on which there was a balance of $5.35. This I collected.

P S Balcom, $15 in December 1894 and $11.60 when I received the Bank. Of this I collected $5. He was a man

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from whom we could not make a collection, but I struck him when he had $5 and he let loose of it.

Fritz Brocker, December 1894 $77.45, $55 when I received the Bank. This I collected.

August Bensel $14.80 had been paid before the Bank failed. Also that of August Butler, $16.75, and also Ellis Carson, $11.50. Comstock, $48.75 had also been paid. A M Cramblett, which was $80 in 1894, was represented on the books $82.40 when I received the Bank, of which I collected $55.

G W Cook, carried at $59.50 December 1 1894, was $54.25 when I received the Bank and was worthless and hopeless.

George C Cole, $10 in December 1894, was paid before the Bank failed.

Francis J DuBois, $54.50 in 1894, $58 when I received
25 the Bank, of which I collected $5.

Michael Dougherty, $102.75 was not in the assets when I received the Bank, neither was Dunlay Bros. $727.15.

The note of E F Dyer $13.85 in December 1894, stood at $14.80 when I received the Bank. It was worthless and hopeless.

J H Day $40 in December 1894 was standing at $15 on the books of the Bank when the Bank failed. This I collected.

Dunlay & Gibbons, $3145.90 in December 1894, was not in the assets, neither was J W Davis, $31.75; neither was Jerry Dunlay $300; but H Diebenderfer $111.90 in December 1894, appeared on the books at $170 when I received the Bank. This I collected.

W M Erwin $20 December 1894 and J P Ekberry $28.25 and A C Ellis $800, were not among the assets when the Bank failed. O Finley $172.70 in December 1894, $214.45 when the Bank failed, I found to be worthless and he had moved from the country for parts unknown.

Farrell & McDonald, two notes, one $1729.65 and the other $239.55 December 1, 1894, remained in the Bank at $460, and $2129.65 respectively. These parties were insolvent and their paper was worthless.

John A Cahley, note in the sum of $261 in December 1894,
26 when the Bank failed was $140.60. This I collected.

Pat Gibbon, two notes of $1,000 each on the books December 1 1894, were not among the assets when I received the Bank; neither was J C Gaddis, $12.80, neither was Emma J Graft $163.75.

W T Gilliland $381 in 1894, December 1, appeared on the books at $19.10 and $381 respectively in 1894, and they were

held by the Bank at $420.10 when I received it. This party had removed many years before and was utterly and absolutely insolvent and nothing was ever collected.

Note of A H Gonser, $25 December 1 1894, had been paid.

Note of J M Hiatt, $45 in December 1894, stood at $199.75 at the time the Bank closed. This note was and had been for many years worthless.

Note of P E Hovey, $1200 in December 1894, was represented by the note of W B Price at the time the Bank failed, and it was understood to be an accommodation note for Burton & Harvey. It was for $1200 and was worthless.

Note of Jonas Hedman $100 December 1, 1894, also appeared at $100 when I took possession of the bank, and was paid. I notice that most of these notes are paid to A B Dewey. That he owned them.

The note of C B Harvey for $4553.01 in December 1894 was carried on the books of the bank at the time it closed at $1900. This represented an indebtedness of Burton & Harvey, accommodation paper.

27 A E Harvey note of $543 in December, 1894 was represented on the books at the time the Bank failed, at $4996. This was understood to be an indebtedness of Burton & Harvey.

Notes of B S Haywood and others, was a college indebtedness which amounted to $849.75 in December, 1894, still stood at that when the Bank failed. I think I collected a part of that.

Note of Christ Herald $55.65 in December 1894, was in the assets when I received the Bank at $60.25. This note was worthless. Herald had moved away, and had been away for many years.

Christ Hopper $10 December 1894, was not in the assets when I received the Bank.

The Interstate Loan & Trust Company note for $5,000 in December 1894 was carried on the books at $5,000 when I received the Bank. This was also an indebtedness of Burton & Harvey.

Patrick Joyce $37.50 in December, 1894, had increased to $45 when the Bank failed, and it was worthless.

William Jennings note of $20 December 1 1894, had been reduced to $18.25, at which amount it was carried on the books when I received it. It was worthless and uncollectible.

W H Joyce $31 December 1 1894 was on the books at $43 when I received the Bank. This note was worthless.

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John W Johnson $50 December 1 1894 was not among the assets when the bank failed.

M Joyce, $22.70, in December 1894, had increased to $27.20 when the bank failed. It was worthless and uncollectible.

28 Margaret Kinsman $321.25 in December, 1894, was not among the assets when I received the Bank.

S B & M J Kirkpatrick paper was in the Bank December 1 1894 at $1056.85, and when I received the Bank it was carried at $1387.55. This I understand to represent a second lien in debtedness against certain lands owned by the Kirkpatricks to Burton & Harvey, and could be considered a Burton & Harvey debt.

Alex Longsine, $51.40, was still unpaid when I received the Bank, and I found that he had left for parts unknown, and had never been worth anything.

Joseph Lester note for $77.45 December 1 1894, of which there remained unpaid $19.10 when I received the bank. This I collected.

The note of Thomas Larimer $600 in December, 1894 still remained in the assets of the bank, except that it was held by Mr Dewey as collateral. I turned the note over to Mr Dewey, and I don't know what success he had in proceeding to collect it. J T Lampson, $175.65 in December 1894, had increased to $222.20 when the bank failed. This was worthless, utterly and absolutely, and had been for a number of years.

Note of John Lover, $9.50 in December, 1894, remained on the books at the same amount when the bank failed. This party had also left the country and was and had been for years worthless.

S Munson $90 December 1 1894 was not among the assets when the Bank failed. Nor S Morgan for $45.25 and another for $20, nor one of John Moore for $15.

29 W S McCoy's note for $10.50 was not in the assets either.

L A McNeal's note for $934.70 appeared as two notes, one of L A McNeal for $500 and one of A McNeal $485.55. Both were worthless and had been for years.

McKee's note for $563.37 in December 1 1894 was among the assets at $861 when I received them. He had removed from Orleans a number of years prior to that and was insolvent, absolutely so.

The note of C A McGrew was not among the assets when the Bank failed. That was for $50.

Murdock, $62.30 in December 1894, had increased to $175.10 at the time the bank failed. Of this I collected $61. Testim Hedl

Benno Mohr's note for $28.25 in December 1894 was still among the assets at $28.25 when I received the Bank. It was worthless and hopeless.

James McCoy $56 December 1 1894 had been reduced to $49.35 when the Bank failed. Of this I collected $30.

Philip Martin $152.85 in December 1894, had increased to $193.85 when the Bank failed. This party had removed from there, and was worthless and had been for years.

Note of $250 of Pat Munson had been reduced to $141 when the bank failed. I think that was paid.

Note of B D Mills $2,000 December 1 1894 had increased to $2,197.50 when the Bank failed. This was worthless, and was an accommodation note for Burton & Harvey.

Note of T J Morris $16.55 was not among the assets when I received the Bank.

30 Neither was the note of C H Morris for $42.

H Neubauer $1387.15 December 1 1894 was still carried on the books at $1387.50 when the bank failed. This was and had been worthless for a number of years. The debt represented a claim of Burton & Harvey against the Neubauers land, on which the first mortgage had been foreclosed, and their second mortgage lien had been extinguished, so it could be considered a debt of Burton & Harvey.

Neufelt, $33.43 December 1 1894, had increased to $47. This amount was absolutely worthless.

Note of Newman, $35.20 December 1 1894 was not among the assets when I received the Bank, neither was Olinyter note $48.75, nor Obert, $300.

The note of Orleans College $996.31 December 1, 1894, was carried on the books when the Bank failed, at $1286.55. This note was worthless, and had become so some years prior to the failure of the bank.

Note of J A Palmer, $293.50, December 1, 1894, had increased to $337.65 when the bank failed. This note I collected.

Note of G R Purdy, $22 December 1 1894, still remained on the books at $22 when the bank failed. This party was worthless. . . .

Pove, $284.62 in December 1894, was not among the assets of the Bank when I received them.

Byron Prickett, $267.30 had increased from December 1 1894 to the time the Bank failed, to $360. This note was also

P. O. worthless, Mr Prickett being a farmer and a very poor manager, and with the failure of crops he never could get ahead to a point where anything could be made by collection.

Poppert, $31 in December 1894, had been reduced to $20 when the Bank failed. This was also worthless.

31 C W Pope, $275.65 in December 1894, was not among the assets nor Parsons $15.75.

Proper & Watts $659.56 in December 1894, had increased to $890.75 when the bank failed. This was worthless both parties being worthless and had been for eight years.

John Quinn $33.08 December 1 1894 had been reduced to $10 when the Bank failed. This note I collected.

Roberson $108.60 in December 1894, had increased to $117.30 when the Bank closed. Riley could not be made to pay this note nor had he been able to do so at any time.

A Richmond $200 in December 1894, was not among the assets when I received the Bank, nor the Roberson note for $112.90.

The J A Randall notes aggregating $3900 was not among the assets when I received the bank, except two small notes aggregating $296.20, which still remained unpaid in the Bank when the Bank closed.

John I Rubottom $10.80 in December 1894, had increased to $13.35 when the bank closed. This I collected.

John Reed $100 was not among the assets.

Thomas Russel's note for $73.90 in December 1894 still remained in the bank at $42.25 when the Bank failed. This I collected.

Reynolds note $75.80 was not among the assets.

The note of Stowell $58.43 had increased to $73.70. Mr Stowell was a laboring man there without property, from whom a collection could not be made.

Carl Stampher, $61.75 was not among the assets.

32 Simpson, $52.15 in December 1894, had increased to $56 when the bank closed. This was worthless. He could not be made to pay. Honest, but unable.

J W Stromsberg $55 in December 1894, had been reduced to $45 when the bank failed. This note was good, and was paid.

B F Soully note for $95 in December 1894, increased to $107.12 when the bank failed. This was worthless, the party had moved many years prior to the failure of the bank.

H O Sitler, $700 December 1 1894 still remained on the books at $700 when the Bank failed. I tried to let him down

easy by calling his paper doubtful, but it could not be collected. He was insolvent and had been for six or seven years. Testimo Hedlu

A E Shock, $24.15 December 1 1894, was not among the assets.

State Bank of Republican City paper, which was in the bank at $1750 in December, 1894, was still on the books of the bank at $1600 when the bank failed. This was and had been for a number of years worthless, the bank having failed without any available assets. F. H. Stitt appears to have been in the assets and is listed at $54.80 but was not among them when I received the bank. This party had been long absent from this country and was worthless.

Tax certificate listed at $24.17 December 1894, were not among the assets when I received the Bank.

O Thompson $16 in December, 1894, was on the books at $15.15 when I received the bank. This party had been dead 2 or 3 years before I took possession of the bank and left no estate and it was worthless.

Thomas B Thompson for $68.90 in December 1894, had increased to $136 when the bank failed. This party was unable to pay and was insolvent and the note was worthless.

33 Note of Abram Tunison $85.70 in December, as also that of C Thomas, $100, were not among the assets.

Note of J W Trainer for $137.75 December 1 1894 was still in the assets at $137.75. This party had removed from the country and was worthless and had been for years.

Note of N B Vincent $1443.10 and $1500 respectively, December 1 1894, had increased to $3755.85 when the Bank failed.

Mr Vincent had been insolvent for many years, 10 or 15 years, prior to the closing of the Bank.

Note of O J Vallicott $344 December 1 1894 had increased to $352.60 when the Bank failed. This party lived near Republican City, and removed from there to parts unknown and has not been worth the money for a number of years and could not be made to pay.

Fritz Van Hallen $50 also Weekly $31.50 and Weber $27.50, were not among the assets nor Wolf's note of $150.

Warners notes for $391.67 and $1204.37 had increased to $1910.84 from December 1 1894 to the time the Bank failed. This party lives up near Moorfield, but has been unsuccessful and has been insolvent for a number of years, and the interest has been added to the paper whenever renewed.

of P. O. Notes of A Williams, $47, Wheeler $45 were not among the assets when the bank failed.

Neither was the note of Westerberg for $14.50.

Note of Charles W Whitney $185.12 still remained among the assets of the bank at $185.12 at the time the bank failed.

Note of R H Watson $1508.76 December 1 1894 had increased to $1925.60 at the time the bank failed. In some way George W Burton was interested in this. I think Watson is a distant relative of his. The real facts about it I never ascertained but it was hopeless and worthless and the party was living in California.

E P Young's two notes of $500 each December 1 1894 were on the books at $726.98 when the bank failed. To secure this indebtedness a number of collateral notes were held by the bank. But the whole of that, both Young's notes and his collateral was turned over to Mr A B Dewey as collateral for his notes. I made a few collections from the collaterals to this Young paper.

34 The Chemical National Bank of New York held quite a number of notes as collateral to a loan made to rediscount for a loan made by them to the bank, and, A B Dewey had quite a number of notes. I find that the list has been mislaid, and I can't refer to them just now, but among them is that of Brocker. $2134.08 was the amount of his certificate of deposit, and I think they aggregated something like $3,000, or perhaps more. Among them was a note of Brocker $55; E P Young, $726.98; to this note of Young's there was about $900 or $100 worth of other collateral paper which was also turned over to A B Dewey. O Hedman $100; A M Cramblett $82.40; C Thomas $90; H T Ferguson et al $649.75; B Mohr $28.25; T Larimer $600; James McCoy $49.33; C W Stampher $37.50. That is all. I collected and paid over to A B Dewey on these collateral notes deposited with him to secure his certificate of deposit as follows: All of the Brocker and Hedman, Cramblett, Thomas, Mohr, McCoy and Stampher paper, part of the Ferguson and Young, and finally turned over the unpaid portions of Young's paper, together with all the collateral that went with it, as well as the Ferguson and Larimer paper,—turned it over to Mr Dewey, and I presume he now has it if he has not collected it.

35 Mr Dewey's indebtedness was certificate of deposit number 44 for $2,000 and interest, $2,134.08.

There had been something colected on the collateral notes

to secure that deposit prior to the time I became receiver but I could not tell how much.

Aside from Mr Dewey, nothing was paid to any of the cred-
36 itors of the bank. No dividend was made to depositors or creditors, while I was receiver, or any time within my knowledge.

I had several personal conversations with Mr A B Dewey with reference to this collateral at Orleans, and on the train going East. He was very guarded as to his admissions in respect to how he came to get this collateral any why he took it; but he agreed with me of course that it was to be considered a loan to the Bank and he wanted security. He said nothing particular as to his fares or as to the condition of the bank. He admitted he had looked over the bank's paper and he had
37 got the best paper, had selected what he thought was the best, and it is true he had got the best paper that was there.

I dont think there was a collateral note in the bank except that attached to Mr Young's paper and possibly to the Ferguson paper, at the time I became receiver.

Now that my attention is called to it, Mr Burton stated to
38 me and I found evidence of an agreement, made between Mr Burton and Mr Dewey, whereby the Deweys should hold certain real estate and certain tax certificates and second mortgage coupons as security for the indebtedness owing by Burton & Harvey to the First National Bank of Orleans. I investigated that fully, and I am satisfied that agreement was made, and I think I have seen a press copy of it.

Q. I hand you what purports to be a letter press copy of that agreement.

A. Yes sir, this is one; there was another which had reference to the home farm, a tract of about 1500 acres, and I had considerable correspondence and conversation with the Deweys about that, and they showed that in later years to insist that security was held by them to secure Burton & Harvey debt to them, when in fact I believe it can be proven that it was the intention to secure the First National Bank, and the Deweys incidentally, as stockholders of that bank, for the indebtedness of Burton & Harvey. I have no doubt that was the intention of that agreement at that time, but it was changed later.

Up to a certain time, I can't state the time now, they turned
39 the money into the bank that was received for the sale of this property which they held in trust, but later I understand, although I dont' know, that they kept the money.

Q. Now I will ask you to look at this letter press copy of

41 P. O. an agreement bearing date February 1st, 1893, and signe
Burton & Harvey, George W. Burton, and ask you if you c
state whose signature is attached to that?

A. That is the signature of George W Burton in his ov
handwriting. Signed Burton & Harvey by George W Burto
and is also signed by Mr Randall, who wrote the agreement
think.

The plaintiff here offers in evidence copy of agreement he
testified to, marked exhibit 1/2.

See testimony page 40, where this agreement is found.

The financial conditions were very bad in 1893, 1894, a
1895 in and around Orleans Nebraska, caused by failure
42 crops, quite a panic over the country. The loss of crops w
total, and the people were in distress and values absolutely d
appeared and many were in want and relief was given free
Times were a great deal better in 1897 than in 1894. It w
easier to collect some of these bills receivable om 1897 aft
I became receiver than in 1893 and 1894.

I knew most of the persons who gave these notes and bi
receivable to the bank personally, and of their financial stan
ing; had known most of them from the time they came, fro
1886.

43 ANDREW E HARVEY, of lawful age, being first duly swo
deposes as follows: (see page 43 of testimony of Hedlu
& Harvey, taken before Miss Emma Hedges, Notary Pu
lic and Examiner in Chancery.)

My name is Andrew E Harvey; I will be 54 October 5 ne
reside in Lincoln, Nebraska, and am a lawyer. Have lived
Lincoln ten years the first of next December. Immediately
fore removing to Lincoln I resided at Orleans Nebraska, fr
May 1883. I am acquainted with the defendant C P Dew
I became acquainted with both C P and A B Dewey soon af
I entered into the firm of Burton & Harvey at Orleans N
braska. That firm was organized about the 1st of May 19
George W Burton and myself constituted the firm. It was
co-partnership running under the name of Burton & Harv
but subsequently we organized what was known as the Int
State Loan & Trust Company; but the business was alwa
entitled Burton & Harvey. In one sense this Inter-State Lo
44 & Trust Co. was a successor of Burton & Harvey. We orga

ganized the Company and took stock in it in the same proportion that we held stock in the First National Bank. I think that we organized pretty near simultaneously with the organization of the bank.

The stock in this Inter-State Loan & Trust Co. was owned by George W Burton, M F Burton, that was Miss Frances Burton, his sister, and myself. We did business with the First National Bank of Orleans. George W Burton was president of that bank. For several years I was cashier and vice-president, but I resigned I think in 1888 or 1889—anyhow it was when Mr Randall became cashier—John A Randall. He succeeded me. Answering the question "Did Burton & Harvey do a banking business as well as general real estate and loan business," I will answer that by saying that the Harlan County Bank was owned entirely by George W Burton, and that Bank run until the First Bank of Orleans was organized as its successor, some time in the Fall of 1885. The First National Bank of Orleans took the assets of the Harlan County Bank, and assumed its libilities. The Harlan County Bank was a private bank. There was no State Banks at that time I think.

H W Burton is the father of George W Burton. I believe
45 he owned stock in the Inter-State Loan & Trust Co. and also in the First National Bank, $1,000 of stock. I think so. The name of the wife of George W Burton was Alma Holman, and when she was married she was known as Alma H Burton. I owned at one time $12,500 of stock in the First National Bank of Orleans. I sold that stock; sometime I think in 1887 or 1888,—I sold $2500 of the stock to Miss Frances Burton; that was in 1889, perhaps. In October 1891, I sold $10,000 of stock to C P & A B Dewey. At that time they bought of me and Mr Burton $26,000 of stock, a controlling interest in the bank.

46 I am the regularly employed attorney of Charles P Dewey and have been his attorney and general adviser since about 1896. I am employed by Albert B Dewey to appear in the taking of these depositions in this case. He has intimated to me that he wants me to act as his counsel through the entire case. In the past I have not acted as his counsel and adviser in the sense that I have

I enclose the note you sent me, which I have signed.

I am very much surprised that A. B. Dewey should persist in his very unreasonable position and make another transfer of his stock.

It will do him no good and possibly it will do him considerable injury.

. . . . . .

Yours truly

A E HARVEY."

Q I call your attention to a letter bearing date January
68 22nd, 1895, and ask you whether you wrote that letter and whether that is your signature attached to it.

A. That is my signature.

Q. I call your attention to the use of this language in a letter of January 22, 1895, ... : "I have concluded that I will not be a director. If the Deweys want to smuggle their stock in the name of some other person, and thus disqualify themselves, they must take the consequences." What do you mean by the language "Smuggle their stock in the name of some other persons," and what information had you on that subject?

A. I had no information. It is evident that at the time that letter was written I had an impression that the transfers
70 of the stock were not bona fide. I dont know of whom I got that impression. I might have got it from Mr Burton, I did not get it from A B Dewey because I had no knowledge at that time I think that he had transferred his stock.

Letter is here offered in evidence, and copy of it is attached to the record marked exhibit 3.

Lincoln, Neb. Jany 22, 1895

Dear Burton:—

72 I enclose one blank directors oaths, that only one I can get. I have concluded that I will not be a director. If the Deweys want to smuggle their stock in the name of some other person, and thus disqualify themselves, they must take the consequences. If I were a director, and the bank should fail, I would not be in a situation to assist in straightening out matters, as I would be not as a director. Besides it would result in my losing my job under the Comptroller. This is General Bobb's opinion. He thinks for me to be a director would be an indication to Orleans people that something is the matter. We may consider this final both as to myself and Mr Hovey. If the Deweys will act sensibly, they will keep at least enough of stock to qualify themselves as Directors. I think they ought to denationalize the bank, and then convey to John. The terms might

be agreed upon in advance. I am quite poorly, and unfit for work.

Yours truly

A. E. HARVEY.

Q. I call your attention to a letter bearing date February 16, 1895, purporting to be addressed to George W Burton,
71 Esq. Orleans Nebraska, signed by A E Harvey. I will ask you if you wrote that letter, and whether that is your signature attached to it? A. That is my signature.

Letter offered in evidence, marked Exhibit 4. Exhi Le 16

Lincoln, Neb., February 16th, 1895.

George W. Burton, Esq.,
73 Orleans, Nebr.

Dear Friend:—

. . . . . .

I note what you say about the Dewey capers. It is to me a matter of great perplexity. It does not seem to me that they are acting with the discretion of full grown men.

It is in my power and it may yet be my duty to fasten upon them a full liability on account of their bank share. I am anxious for everything to terminate amicably and successfully, which it can do if they use the least bit of gumption.

Of course A. B. Dewey had no right to take collateral to secure his C. D. It was an outrageous thing and if known by the Comptroller he would raise the biggest kind of a muss and put them in very bad shape. Their cupidity and panicky fears is causing them to do things that men of cool heads would not think of doing. I am extremely anxious that they shall not lose anything on account of this connection with us, but I am also equally as anxious that the bank shall not lose anything through them. I wrote a long letter to A B Dewey making them important suggestions and requesting him to telegraph reply.

. . . . . .

Yours truly,

A. E. HARVEY

Q. I call your attention to the following words in the letter which I have submitted for your inspection, and ask you to explain what you mean by them, and what knowledge you had; "It is in my power and it may yet be my duty to fasten upon them a full liability on account of their bank shares."

A. Well sir, I don't know what I meant. . . . .

E. Q. . . . In the following language: "Of course A B Dewey had no right to take collateral to secure his C. D." What did you refer to as C. D.

A. Why I must have been informed by Mr Burton probably, that A B Dewey demanded and received collateral for certificates of deposit he held from the First National Bank of Orleans.

Answering the question as to where I got this knowledge that he had taken collateral, Mr A. B. Dewey, I could not state positively. He might have told me on the cars when I rode with him as far as Wymore. I couldnt remember that conversation any more than what is shown in the letter.

I dont remember what the letter was about referred to in these interest which matures upon Mr Burton's $12000. loan made as usual this spring. This thing has assumed such position that it would not hurt Mr. Burton as much as it would hurt the bank to allow a foreclosure upon that farm. The same is true upon my own, but I do not anticipate any trouble to mine. I hope to rent my homestead for cash rent or for a note
89 which I can sell for enough to pay last Fall's interest and this Spring's interest and I will get enough off the preemption to pay next September interest and the taxes.

In all reasonable action for the common good you can count upon my hearty co-operation but whenever I think that you are adopting a policy which is inimical to your own interest as well as the interest of all the rest I feel that it is my duty to protest.

Permit me to close with assurances of highest regard.

Yours truly,

HARVEY.

As to the financial condition of the Bank at that time, its deposits were low. The fact that the deposits were low, and
90 continued to become lower caused Mr Burton great anxiety and uneasiness, and as I said before he wrote me very frequently about the condition of the Bank. Mr. Burton was anxious and very uneasy about the fact of the presentation of the certificate of deposit of C. P. Dewey in the manner in which it was presented.

Q. I call your attention to a letter dated March 1, 1895, and ask you whether you wrote that letter and whether your signature is attached. A. That is my signature.

Q. What do you mean by this language in the letter: "What you wrote about C P Dewey's last move only serves to confirm

the impression that he hasn't got good horse sense. I think you did exactly right in refusing to pay the C. D."

A. I suppose that I meant it was a very unwise and foolish thing for Mr. Dewey to send his certificate of deposit for collection through the express company.

By "Mr Dewey is not entitled to payment and should he
91 get the money in the case of anything happening to the Bank the receiver would undoubtedly make him pay it back" I meant he was not entitled to a preference over the other creditors.

This letter is here offered in evidence, copy attached to testimony marked Exhibit 7. Exhibit 7. Letter 1, 18

Lincoln, Neb., March 1st, 1895.

Geo. W Burton, Esq.,
Orleans, Nebraska.

92 Dear Burton:—

I have just received your letter of yesterday.

. . . . . .

What you wrote about C. P. Dewey's last move only serves to confirm the impression that he has not got good horse sense. I think you did exactly right in refusing to pay the C. D., but of course it was a very ticklish thing to have to do and if Mr Holder were not a very discreet man, it might result very disastrously. Mr Dewey is not entitled to payment and should he get the money, in case of anything happening to the bank, the receiver would undoubtedly make him pay it back.

. . . . . .

As soon as things assume a shape in Orleans so that I can make a tangible statement Mr. Bartley and I will apply to him for some state money. Of course, at the present time it is not practicable to make an application. . . . . .

Yours truly,

A. E. Harvey.

Q. I call your attention to a letter bearing date March 4,
94 1895, purporting to be addressed to George W Burton, and ask you whether your signature is attached to that letter.

A. That is my signature.

of March Letter is offered in evidence, and copy attached to record marked Exhibit 8.

Lincoln, Neb., March 4th, 1895

Geo. W. Burton, Esq.,
Orleans, Nebraska.

Dear Burton:—

I have your letter containing the later development.

. . . . . .

I have had a long talk with General Cobb this forenoon and
95 I suggested to him that it would be a good plan for us to prepare a bill in equity and have it ready to file in the name of the Bank against C. P. Dewey. The object of the action being to subject the land which we deeded to him to the payment of the Burton & Harvey indebtedness to the bank. You know that until a receiver should be appointed, no action could be commenced and in the meantime Dewey would have an opportunity to get away with the property temporarily at least.

If the bank commences the action the very day that it closes its doors, if such a thing should happen, the pendency of the suit would tie up the real estate and prevent any innocent purchaser getting title.

If you think proper of this I think it would be well to send us a complete list of all real estate conveyed, with dates of the conveyances and every other fact in connection with the transaction that would be of benefit to us. We could then commence to prepare the bill and having prepared it, send it to you, so that you could file it while the Bank is still running.

It has occured to me also that in case of the suspension of
96 the bank seeming to be inevitable it would be a good plan for me to go to Washington and lay the whole matter before the comptroller and try to get him to authorize the bringing of whatever suit may be necessary.

. . . . . .

Yours truly

A. E. Harvey.

The low state of the deposits and continual withdrawal of
94 the same, made Mr Burton very anxious and fearful and of course the possible suspension of the Bank was thought of and might have been discussed between us, but I have no remembrance of any particular talk about it. This letter was written on the theory that Mr Burton and I thought it was imminent on account of the low deposits. I have no particular remembrance of the suit that was to be brought against C P Dewey any more

than can be gathered from the letter itself. I was temporarily led to suppose that C. P. Dewey and A B Dewey were not intending to be fair with the Bank, although I have since learned that I was altogether mistaken.

Q. I call your attention to a letter written March 6, 1895, purporting to be signed by A E Harvey, and ask you whether you wrote this letter, and whether that is your signature.

A. Yes, that is my signature. Well, there is no signature to it.

Q. Did you write the letter? A. It sounds like my composition.

Letter offered in evidence, dated March 6, 1895, and copy attached to record, marked Exhibit 9. Exhibit 9 Letter 6, 18

Lincoln, Neb., March 6th, 1895.

Geo. W. Burton, Esq.,
Orleans, Nebr.

Dear Burton:—

I received your letter of yesterday and the day before and also received your telegram.

This morning I went to the State House and had a consultation with Mr. Ager. My idea was to apply to the State Treasure for three or five thousand dollars and ask him to send a man to Orleans to investigate the character of the paper that you would want him to take. Mr. Ager thought that I ought not to say a word about it to Mr. Bartley until I knew that you had failed to get the money in Omaha.

He said that if you should denationalize and organize a state bank and desire to obtain state money it would prejudice you some to have Mr. Bartley know any-thing about the present troubles.

I accepted his advice as wise and did not go to Mr. Bartley but returned to the office and your telegram came a few minutes after.

Mrs. Burton thinks you and I ought to go to Chicago and see the Deweys. I feel that we would only meet with rebuff and meet with no good results. I certainly think this would be the result of an interview with C. P. Dewey. I do not know whether A. B. Dewey has enough of courage independence and wisdom to take and follow the proper course in this emergency or not. If he has he should immediately deposit some money with the bank and stay right with it.

. . . . . .

HARVEY.

Q. I call your attention to letters bearing dates as follows:
98 January 21, 1893; February 8 1893, December 26, 1893, and January 10 1894, and ask you whether you wrote those letters and whether the matters and facts stated therein, according to your best memory, are true;

A. Well, I wrote the letters. Some of the matters and facts were true, and I was under wrong impression as to some of the matters.

Plaintiff offers in evidence the letters referred to. Copies of said letters are attached to the record marked exhibits 10, 11, 12, 13 respectively.

Lincoln, Neb., Jan'y 21 1893

Dear Burton:—

I sent the deeds of my homestead and preemption to Deweys the day after I got to Lincoln, and they must have had time to receive them before they wrote you. I have written to them about it. I directed to C P & A B Dewey, Chamber of Commerce building. I would much rather the Deweys would hold our notes, now held by McShane & Condon's eastern clients. I have had a list of our mortgages at the capital made up, made by counties, and the mortgages "bounded" by counties,
9 and will keep one list here. When you write for a mortgage now, always give the county, and then I can find the mortgages in a minute.

Yours truly

A E Harvey.

Lincoln, Neb., Feby 8 1893

Dear Burton:—

On my return home from Norton Co. where I had been attending Court, I found your letter of the 6th inst. I attach no importance to the actions of Messrs Dewey. It only shows that they have lost confidence to a degree and are "unco" cautious. If they will take up the McShane & Condon note on a reasonable amount of collateral I do not care whether they
100 take up the notes at the U. S. and Capital National or not. I think we can sell lands to pay the capital, and no doubt the U. S. National note can run as long as we want it to run. While it is quite convenient to have possession of the second mortgages, still I think the convenience thus gained is not at all commensurate with sacrifice of control of so large a portion and in fact, nearly all of our assets. However, I have no doubt that Messrs Dewey will do just as they agreed to do, because

the agreement is greatly to their advantage, as giving them so much more security for what we owe the bank. I agree with you that we must sell land, and sell it P. D. Q. so as to reduce our interest bearing indebtedness, and restore confidence to Messrs Dewey. I dont see why the devil we cant sell our lands at a fair price, while everybody else sell their lands at big figures.

Lincoln, Neb. December 26, 1893 Ex
1
2

Dear Burton:—

101 I enclose Dewey's letter, which I have answered, explaining how it came to pass that I made out the contract. They appear to want the money, and at the same time repudiate the contract. They are like Johny who cried because he could not have his cake and eat it, at the same time. It seems to me that C P Dewey will eventually blunder into the position of an actual purchaser of all our land, at the consideration named in the deeds. He evidently considers himself as mortgagee in possession.

Yours truly

A E Harvey.

Lincoln, Neb. January 10 1894 Ex

George W Burton, Esq.
Orleans, Nebraska

Dear Burton:—

I am very much relieved upon the perusal of your favor of January 9th. I cannot see what object the Deweys had in

102 asking for a quit claim deed and still refusing to credit our notes with the amount of the consideration. It was simply a senseless demand.

I am exceedingly glad that you have been reelected president, and that Deweys have promised to do all they can to help you in the farm loan business. I have an idea that if you had succumbed to their demands they would not have agreed to assist you by reference or any other way.

. . . . . .

I believe I could arrange for a deposit with your bank of from $25000.00 to $50000.00 by the State Treasurer if you and Deweys care to give the required bond.

Yours truly,

A E Harvey

Q. If there is any mis-statement of fact in any of those letters as you understood them at that time, you are at liberty

to state in what respect they are incorrect. A. Why, through misrepresentations of Mr Burton, constantly made, I was led to believe that C P and A B Dewey entertained intentions
13 to take advantage of their holding the title to a large amount of real estate, to the detriment of the Bank. I now know that I did them a gross injustice and that they had no such intertions at all.

Q. I call your attention to a letter here purporting to be written April 9, 1894, and signed by A E Harvey, and ask you whether you wrote that letter and whether that is your signature? A. That is not signed by me. I don't know in whose handwriting the signature is. I do not remember dictating the letter; it appears to be written on my letter head.
104 I do not recognize the writing.

The plaintiff offers this letter in evidence, and copy of same is attached to the record, marked Exhibit 14.

Lincoln, Neb. April 9, 1894.

George W Burton, Esq.,
Orleans, Nebraska.

Dear Burton,—

105 Mr Mills has just shown me a letter from the bank examiner in which he is ordered to take out of his bank one of our $2000.00 notes. The examiner claims that it is an excess of the amount that the bank can loan to one individual or firm. He still claims that we are partners. Then says that he is in no condition to make a quarrel with the examiner and it seems that we will have to make some kind of a change.

I would suggest that you give Ben several notes of parties in Harlan County, if we have them, belonging to B. & H. that have been laid away. These notes could be renewed and put in the bank in place of one of our $2000.00 notes I suggested to them that we could put in the Inter-State Loan & Trust Company notes, but he thinks Cline would object.

. . . . . .

Yours truly

A. E. Harvey.

Dictated.

Q. Do you know what is referred to here when the follow-
106 ing language is used: "I would suggest that you give Ben several notes of parties in Harlan County if you have them, belonging to Burton & Harvey. These notes could be renewed

and put in the Bank in place of our $2000. notes. I guessted Te
108 to Ben that we could put in the Inter-State Loan & Trust Company notes but he thinks Cline would object." A. I do not know what it refers to particularly. The "Ben" may have been Ben Mills, probably so. He was president of the Republican City Bank. He held accommodation notes signed by me and Mr Burton in his Bank. By accommodation notes I mean, there was no consideration for them. I signed a note for Mr Mills, and gave him my note when I was well-to-do, or thought I was well-to-do. And in consideration for that he gave his note for $2000 in the Orleans Bank I think. I got nothing on the note put in his bank, and he got nothing on the note he put in our bank. I do not remember this letter; I didn't sign it but it was probably dictated by me. When I said here that one note was to be replaced by some old notes of Burton & Harvey, I take it that it was a note in Mr Mills Bank.

Q. I call your attention to letters bearing dates as follows:
109 April 22 1894; June 4 1894; August 3, 1894; August 13, 1894; September 22 1894; December 26 1894; and January 5, 1895, and ask you whether you wrote those letters and whether the facts stated therein are true. A. Some of those
110 are not signed by me, but I think those are dictated by me.

Q. I call your attention to letters bearing dates as follows: July 27, 1895; July 29 1895; August 1 1895; August 6 1895; August 8 1895; August 21 1895; September 17, 1895; October 26, 1895; December 20, 1895; January 10 1896; January 12, 1896; January 14, 1896; January 17, 1896; January 28 1896; February 5, 1896, and January 23 1895, and ask you whether you wrote those letters, and whether the matters and facts stated therein so far as there are statements of fact, were true? A. I wrote the letters, but I do not want to answer the last part of the question because I have not read them with sufficient care to state. . . . I will say this: When the letters were written so far as I know they were true. I have found out some mistakes since then.

The plaintiff offers in evidence all these letters last shown
111 to the witness. Copies of said letters in record are marked Exhibits 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37

Cobb & Harvey
Attorneys at Law
General Business

Amass Cobb
A E Harvey

Lincoln, Neb. April 22" 1894

112 Dear Burton:—

I have written to the clerk of the District Court of Hayes Co. and dismissed the case against C E Richland. I today write to C A Ready, attorney, full instructions to take confirmation in the McManno and Weakly cases.

When I was at Orleans last winter we figured the B & H indebtedness and your, and my individual indebtedness combines, to amount to $74000. Of this $2,500 Mills note, and $2,500. Vincent note, and $1000 note in bank, and perhaps $1,000 of other notes in bank, for your individual indebtedness, and the Meniburg note $700, and my note for $543.00 is my individual indebtedness, making a total of $8,000 in round numbers, to be deducted from the $74,000, leaving $66,000 B & H debt, of which my share would be $16,500, to which add $2,000, as the estimated amount due from me to you, on account of payments made by you on B & H debts, as my share. This would make my total indebtedness on account of the B & H business $18,500, estimated. This would be on the estimate that you had paid $8,000, since I paid any. My individual property would be listed about as follows.

Property in Furnas Co. value about encumbrances	$6,500.00
One half section near Phillipsburg, value above en-	
113 cumbrances,	1,200.00
One half of equity in three quarters in Harlan Co.	500.00
—2—	
Carried forward	8,200.00
One half equity in McMillan land	400.00
All other real estate	1,400.00
Total	10,000.00
Add Clara's equity in Los Angeles land	3,000.00
	13,000.00

B & H assets of all kinds, including land, town property, guaranteed notes, second mortgages, and coupons, and interest thereon I give a face value of $80,000 of which $20,000 would be my share. This would give me $33,000 worth of stuff to pay $18,500 with. I believe It will do it, if I can make the deal I suggested in a former letter, and it would very much

improve your credit and prospects, if I could pay up in cash $18,000 or $19,000 of the firm debts.

I expect to start in a couple of days, on a business trip, etc.

. . . . . .

Yours truly

A E Harvey.

Lincoln, Neb. August 13" 1894. Exhibit 18. Letter dated August 13, 1894.

Dear Burton:—

118 I believe that our lands in Kansas go to tax deed Sept 1, 1894. I dont know what the devil to do about it. I believe that mortgagees have deeds to 240 acres of my land in Phillips Co. but there is a clear 80, not deeded to any one but Deweys. Of course the tax deeds will cut out the holders of the mortgages also. Do you know anything special about the condition of these lands as to taxes. It seems a pity to put a cent of good money in that hole. If we had the money we have paid for taxes and interest on our land we could about pay our debts. I have a remote hope that this is the last year of drought, and hell to pay generally, and that everything will start up hill next year. I cant now see how we can get much further down.

Yours

A. E. Harvey

Ex. 18.

Lincoln, Neb. September 22 1894 Exhibit 19. Letter dated September 22, 1894.

Dear Burton:—

119 I have talked over the question of making a quit claim deed to Messrs Dewey, with General Cobb and after considerable deliberation we can neither of us see how they will be in any better position after taking a quit claim deed. We both think however that you should accompany the deed with your note for the amount that Dewey's are to advance and a letter showing that the quit claim deed is given upon their demand, as a condition for the advance. This will show that the quit-claim deed will be given as collateral security for the money so advanced, and it will in effect be a third mortgage. The quit claim deed will not change the position of the parties in our opinion. "Once a mortgage, always a mortgage" is a rule in equity. Besides C P Dewey holds the present deed as a trustee for the bank, and a mortgage never merges in favor of a trustee.

Yours truly

A E Harvey.

Exhibit 19.

Lincoln, Neb., December 26 1894.

Dec. 121 Dear Burton:—

It is a question in my mind whether we had not better "own up" that Mill's note in your bank is an accommodation note, and that our notes in Mills bank are the same. It seems to me that the knowledge of the Pt of the character of the notes will bind the bank, and if the R-City bank fails, owing our notes we can beat them in a suit. What do you think? Of course this is a mere suggestion, and I would not mention it to Mills. The St Joe bank has my note as collateral and the bad feature is that Mills never reported this $2500 loan at St Joe as a bank loan. It seems to me that Mills is in a devilish bad fix. It is too bad that he goes to pieces, just at this time of the year.

Yours

HARVEY

Exhibit 20.

Lincoln, Neb., January 5th, 1895.

Jan. George W. Burton, Esq.,
Orleans, Nebraska.

Dear Burton:—

I have your letter. I will leave here tomorrow night and reach Orleans Monday morning.

122 I cannot believe that C P Dewey is such a short sighted business man or has been so foolishly advised as to contemplate what you fear he does contemplate. He cannot accomplish it and would only cover himself with disgrace and financial loss, if he undertakes it. The deeds are made to him as trustee and that fact is noticed all the World and there can be no such thing as an innocent purchaser of the land, that was deeded to him. I think the matter will come out all right.

Yours hastily,

A. E. HARVEY
Per F

Exhibit 21.

Lincoln, Neb., July 27" 1895

July Dear Burton:—

I called on Bartley first thing this morning and he was in a great hurry, but he told me that he would do anything he
123 could to do me a favor, and that if possible he would let me have some money. He told me to call this afternoon at 3. O'clock I called on time and he said he would help me out,

but could not let me have the money until nest week, when he said he would positively let us have $1,000 and maybe $1500 for 90 days. I told him we wanted it today, but he said he could not let me have it today. I went straight to Harwood and asked him to let us have $1,000 until next week. He saud he never could get the account of your bank, and thought you ought to go to your own correspondents. I told him you thought of making a change. He is to let me know tomorrow morning about letting us have the $1,000. I called on Mayer Bros. who say they will know Monday morning whether they can let us have $1500; after I visited Bartley the first time I wired you that prospects were good. I confidently expected to get the money this afternoon, but Bartley says we can depend on $1,000 next week sure. Now the question is how to pull through until we get the money from Bartley. . . . . Exhibit Letter 27, 18

Yours truly

HARVEY.

Exhibit 22.

Lincoln, Neb., July 29" 1895 Exhibit Letter 29 18

124 Dear Burton:—

I got $500 currency from Harwood after a long talk. He said the U. S. National boast about how well it takes care of its customers and then leaves them in the lurch in a crisis. He said that you had not called on him during the three years that he had been in bank, etc. etc., but finally said if I would give my note on demand for $500 and turn over Gibbon's $500 note, and Farrell & McDanoughes note and Lamsons note, he would let me have 500. If you had been keeping your account with Harwood, I think he would have let you $20,000 if necessary, to keep the bank afloat. If I were you I would leave Barlow as soon as I could. Harwood seems to think his conduct inexcusable. He was surprised that you only have $5500 rediscounts. I wired you that you had better have Porter remit $500 to Chemical. I think he will do it. Everbody here are scared about the drought. Corn is in great danger. I forgot to say that the $500 was given me on condition that I was to pay out of Bartleys money.

. . . . . .

Yours in haste

A. E. HARVEY.

Exhibit 23.

Lincoln, Neb., August 1st, 1895.

Aug.

George W Burton, Esq.,
Orleans, Nebraska.

Dear Sir:—

125 I called on Mr Bartley this morning and he was not ready to give me the $1000. He had promised so I left the note for $1000. with collateral note of $2600. of Pat Gibbons with him and instructed him to pay $500. to Harwood and deliver the other $500. to General Cobb. The General will have Stull Bros. telegraph $500. placed to the credit of your bank as soon as the money is received.

Bartley says he will pay it this week. His delay is somewhat unaccountable.

I had a talk with him about your bank giving a bond to the State and getting a part of the state money. He said he thought that was the thing for you to do. It seems to me that it would be well for you to immediately proceed to get a bond and apply for $10,000. state money. If John will sign with you, you will have no difficulty in getting the bond and after you get the $10,000. you would have no difficulty in denationalizing.

. . . . . .

Yours truly,

A. E. Harvey

Exhibit 24

. . . . . .

Lincoln, Nebr., September 17th, 1895

Sept.

Geor W. Burton, Esq.
Orleans, Nebraska.

129 Dear Burton:—I have today written a letter to Mr. Randall that he can show to Preston, which will have the effect to satisfy Preston that you are doing everything you can to make him believe the state treasurer intends to send on a deposit.

It is a matter which cannot befforced and the more we agitate the treasurer the worse it will be.

I do not know how it will be about going to Chicago next Sunday. I will write you later.

Yours truly

A. E. Harvey.

Exhibit 28.

Lincoln, Neb., October 26th, 1895.

Geo. W Burton, Esq.,
Orleans, Nebraska.

130 Dear Burton:—I stayed in Chicago two days after you left. I had several conversations both with C. P. and A. B. Dewey. I am confident that C. P. means to stand by his offer if accepted within a short time. I told them both that I would much prefer to have them take my note for $5000. 5 years time at 6% and give a credit upon B & H note for that amount; then they could make such a deal with John or Mr Porter as they saw fit for the balance. I received no particular encouragement to believe that they will do this but they did not refuse to do it. I do not like much the idea of their selling our paper on the terms proposed and would much prefer to have them make the arrangement with me that I have indicated.

. . . . . .

Yours truly,

A. E. Harvey.

Lincoln, Nebraska, December 20" 1895

Geo. W. Burton, Esq.,
Orleans, Nebraska.

Dear Burton.

. . . . . .

The struggle for a livelihood here in Lincoln is simply appaling; the town is full of half-starved attorneys and each one
131 is making a grab for every nickle in sight. I am satisfied that General Cobb and I will be wending our way "over the hills to the poor-house" in a very short time to join our friend, Joe Brown of Plattsmouth, unless we waken up and commence to grab like the other fellows.

Yours truly,

A. E. Harvey.

Exhibit 30.

. . . . . .

Lincoln, Neb., Jan'y 12" 1896

Dear Burton:—

I have your letter of the 11" inst. Of course the only wonder is that the Comptroller did not long ago make the order which he now threatens. It is my solemn judgment that Frances ought not to be permitted to mortgage her home. It will in my opinion do no good. It will only be like throwing money in a yawning gulf. It will only result in depriving

Frances of her home, and no one benefitted thereby. If it would save the bank, it would be a different thing, but it dont do it. I am of the opinion that Meserve will take such action as will result in closing a lot of banks whether the Comptroller does anything or not. He intends to refuse to accept C. D.s from certain banks unless compelled by the court to do so. His refusal to accept C. D.s from certain banks, will be a death blow to the credit of the banks, as soon as the names of such banks are generally known. I do not see anything to save a whole lot of banks and the First of Orleans among them. Of course miracles have occured, and may occur again. I am glad that the Comptroller has given 30 days. It is fortunate that I am to go to Washington and will be there at the expiration of the 30 days. If the state treasurer shall not before that time have knocked you out perhaps I can influence Mr Eckles to give more time. In fact I am not anxious about what the Comptroller may do. It is the lack of cash that is the matter. . . . . .

I am glad the total liabilities of the bank is only about
134 $33,000. very different from $125,000, the debts of the Alma bank. I wish you would try to get the supervisors to adjourn the Feby 1st term of Court. Mr Lamb may go out there tomorrow night.

Yours

HARVEY

Exhibit 32

Lincoln, Neb., Jany 14 1896

Dear Burton:—

135 I have your last letter about the County Treasurer. I wire you that Harwood advises to try to get some money from Chemical. He thinks you had better send two or three dollars for one, and explain pretty fully to Mr Quinlan. I see no other way to go after more money. I am writing fully to C. P. Dewey in the slight hope that he will come to the rescue at the last minute. In any event it is a good idea to keep him posted. I would not attempt to pay any more to McCulloch even if he draws on you. He will desist if he finds you cant do it. and he has no desire or interest or duty to force you to the wall.

Yours truly

HARVEY

Exhibit 33.

Lincoln, Neb., Jany 17" 1896

Dear Burton:—

. . . . . .

136 I have been seriously disappointed in my expectations about the amount of money I would receive from the business of Cobb & Harvey. I have paid my expenses for 1895, and about $100 of odd debts, and about $300 interest and taxes paid during the year and $400 my half of Cobb & Harvey's debts. I start in the new year with nothing ahead. This is why I so much need my half of the McClure and Marklove fees, Mrs Granger has sent us $60.00. I have reduced my living expenses very materially, and think I can go through 1896 for about $800. My rent for the last six months of 1895 was $20 a month. I have no claims of Dr Downing except notes that were taken in his tours in Kansas of which I have never collected a dollar.

It looks as though the county funds flurry will blow over yet. You cannot expect to get any money to keep from Bartley. I have an idea that few banks can stand to be drawn on for a dollar.

Yours truly

A. E. Harvey.

Exhibit 34.

137 Lincoln, Neb. Jan'y 28" 1896

Dear Burton:—

. . . . . .

Mr Hovey is here, looking over the ground with the view of starting a grocery at Havelock, The Lancaster Land Co is doing all it can to build up Havelock.

. . . . . .

If the bank should be obliged to suspend, and Mr Hovey called upon to pay that note it would ruin him for all time. Have we no old paper belonging to B & H that we can put in? and take out Mr Hovey's note? If Paxton & Gallagher will not grant the credit, that will be the end of it.

Yours truly

A. E. Harvey

Lincoln, Neb., Feby 5, 1896

Dear Burton:—

I enclose notes by Mr Price. In fact this paper ought to be rated better than Mr Hoveys as Mr Price is an active young
139 lawyer, who stands a good chance of being elected Police Judge this spring.

This Morning's Journal has quite an article on Harlan Co affairs. It speaks of "about $10,000" of County money which is secured by a bond. They mean the County money in your bank. It is very important that the money be showed up at once.

. . . . . .

Yours

HARVEY

Exhibit 36

140 Lincoln, Neb., January 23rd, 1895.

Geo. W. Burton, Esq.,
Orleans, Nebraska.

Dear Burton:—

Since writing you this morning I have received your favor of the 22nd inst.

I think it would be well not to write to Mr. Dewey until after due deliberation. He told me on the train that he would not advance any money for taxes or interest as long as there was any question about his title. He said that must be settled the first thing before there could be any consideration of the question of the denationalization or the advancing of any other money.

I am strongly of the impression that Mr. C. P. Dewey as trustee (and A. B. Dewey and the bank as beneficiaries) will not be permitted to sell the bank's stock for a grossly inadequate price to the prejudice of the beneficiaries.

I think the stock must be sold at a fair price and that they must account to the other beneficiaries and must realize from the stock what would be considered a fair price by a court of equity.

A good deal depends at this crisis upon care and deliberation with which, I think we may depend upon a reasonable and satisfactory settlement of all matters.

. . . . . .

Yours truly,

A. E. HARVEY.

Exhibit 37.

MISS M. F. BURTON, being first duly sworn, testifies as follows:

Testimony of M. F. Burton.

My name is M. F. Burton, age 57; residence, Orleans. I
1 came to Orleans in 81. I am a sister of Geo. W. Burton. Geo W. Burton is dead. He died Oct. 6 1900. He was president of the First National Bank of Orleans. My father's initials are H. W. and Geo. W. Burton's wife's initials are A. H. I was assistant cashier for a while of the bank, and vice-president. I was vice president at the time the bank failed. I was assistant cashier in Dec. 1894. I have met A. B. and C. P. Dewey several times. I was a stock holder and director in the bank. I owned $10,000 of stock, there was $11,000 in my name.

I cannot tell positively from whom I acquired the last ten shares. I am not sure whether $1000 was in my name or my brother's.

Q. I call your attention to this certificate, number 111, for 10 shares of stock in the First National Bank of Orleans, Nebraska, being exhibit 49, attached to the deposition of John A. Randall, and I ask you whose signature is attached to the indorsement on the back of this certificate? A. This is my brother John's signature.

2 I do not remember whether this certificate of stock was delivered to me or not. I think it was kept there with some other papers. I did not pay anything for it.

I remember A. B. Dewey visiting the bank about the 11th of January 1895. I think that was the time when he disposed of his stock. He wanted my brother to get someone to take it. At that time Mr A. B. Dewey had disposed of all his stock except ten shares.

Q. I call your attention to certificate No. 83, for 10 shares, in the First National Bank of Orleans. It being exhibit 19, attached to J. A. Randall's testimony, and I ask you if you are acquainted with the signature of A. B. Dewey, and whether this ten shares were put in the name of John M. Burton? A. I know it. At that time it was put in the name of John M. Burton.

Burton. John M. Burton was not aware of the transfer. I dont think he had any knowledge of the transfer of the stock
3 to him, but I do not know. Mr. Dewey wanted to get rid of the stock. He insisted on getting rid of it. For consideration,

of M. F. George gave him his note. I think it was before this transfer, and not at that time, that Mr Dewey and Mr Morlan looked over the bills receivable of the bank. Mr Dewey at the time when he visited the bank with Mr Morlan held a certificate of deposit for about $3,000. He demanded and received collateral security, bank notes, or bills receivable. As near as I can remember the amount of collateral was about the same amount. The names and amounts of the bills receivable turned over to Dewey were:

A. M. Cramblet	$37.40
H. T. Ferguson and others	700.00
W. H. Joyce	43.00
4 Thos. Lorimer	600.00
James McCoy	19.35
C. A. Roberson	117.30
Thomas B. Thomas	46.00
E. P. Young	1000.00

Then there were some others, but I cant give the names and amounts. Mr. Dewey and Mr Morlan picked out these notes. He had Mr Morlan look over them. These notes were considered the best then. There was something paid on some of these colalteral notes to A. B. Dewey at the time of the failure of the bank.

5 As to the condition of the bank when C. P. and A. B. Dewey transferred their stock at the bank, it was hard up. The deposits had fallen off some. After they sold the stock inquiries came, and made them fall off a great deal faster. There were in the bank at that time a great many uncollectable note. Among these the note for $5,000 was Burton & Harvey's note, really an accommodation note to be paid as the collections came in. Burton & Harvey had a great many notes coming in. Hard times came, and they could not be collected. This note was in the bank when the bank failed. There was a note in the bank of H. Neubar for $1,387.00. It was through a judgment or case, it was in connection with. Prior to Dec. 1st 1894 it had been in the bank 6 or 7 or 8 years.

6 The note of S. B. & N. J. Kirkpatrick for $1,056.85, among the bills receivable, had been in the bank 7 or 8 years. I think he had borrowed some money and they advanced some interest for him.

The financial condition of this part of the country was pretty hard, caused by drought, mainly. All possible effort was made to collect these bills receivable. Values during the years 94

and 95 shrunk almost to nothing. I think most of the notes that were in the bank in 1894 remained uncollected and were in the bank when it failed. The Burton & Harvey indebtedness was placed in the names of Mr. Harvey, Geo. W. Burton, myself, Mrs. Harvey, Mr Hovey and Mr Mills. This indebtedness was decreased at times and increased at times, it was larger in 97 than earlier.

The First National was the successor of the Harlan County Bank. The paper of the Harlan County Bank was taken over to the First National. The latter was organized October 1885. I think there were some of the bills receivable in the bank in 94 that came down from the Harlan Co. Bank.

Q. I hand you what peports to be a list of the bills receiv-
7 able in the bank Dec. 1st, 94, which is attached to the deposition of J. A. Randall. Please look it over and state what notes or indebtedness date back to the Harlan County Bank.

A. A. V. B. Beam, $1,705. John Gehley's note for $261. was in the bank for a long time, but I cannot tell whether it was carried over from the Harlan County Bank or not. J. M. Hyatt, $45. The note of A. H. McKee had been in 7 or 8 years prior to 1894. The Phillip Markham note had been in the bank prior to 94 5 or 6 years. The B. D. Mills note had been in prior to 94 2 or 3 years. Orleans College notes for $996.31 had been in the bank 3 or 4 years. . . . The J. A. Palmer note for $295.50 had been in 2 or 3 years prior to 94. The note of Byron Prickett for $267.30 was in for several years prior to 94. The note of Copper & Watts for $659.56
8 had been in the bank about 5 years prior to 94.

The note of C. A. Roberson for $108.60 had been in the bank 2 or 3 years prior to 94.

The notes of J. A. Randall for $2,900 and $1000 had been in 2 or 3 years prior to 94.

The notes of State Bank of Republican for $1,750 had been in the bank 1 or 2 years prior to 94.

The notes of J. W. Fringer had been in the bank prior to 94 3 or 4 years.

The notes of Geo. W. Warner, for $391 and $1,204.37, part was carried over from the Harlan Co. Bank, balance had been in the bank not very long when the Deweys came in in 91.

The R. H. Watson note for $1,500 had been in the bank for 7 or 8 years prior to 94, in varied amounts.

E. P. Young's notes for $1,000 had been in the bank prior to 94, 1 year.

Most of the time that bank had up some of its notes as col-

y of M. F. lateral, with the Chemical National Bank, New York, and U. S. National Omaha.

I remember very well of C. P. Dewey sending to our bank a certificate of deposit. Mr. Holder, the express agent, presented one of his own first, that was paid. Then he presented C. P. Dewey's. Before they sent their certificates directly to the bank. We declined to pay C. P. Dewey, because he was interested in the bank and we were not able to pay it. Burton Harvey owed C. P. and A. B. Dewey. They had mortgaged all they had to secure them and make them safe in the bank.

Q. State in truth that the Deweys claimed that the property pledged to them was first to secure their private indebted-
9 ness and after that the Bank's indebtedness.

A. As I understand it, after they came out of the bank they claimed that, but not while they were in the bank.

Q. State whether the larger bills receivable were given for moneys advanced for the bank or on whole notes that were paid in the bank by Burton & Harvey, or that arose our of their business transactions? A. There were several that way.

10 *Cross-Examination.*

. . . . .

Burton & Harvey were too kind hearted about pressing payment on the notes. Some notes that seem to be bad, will be paid after a while, while others that seem to be good, get worthless. Sometimes the paper of good men was carried by the bank for several years. Some of the bills receivable that were sold by the receiver at auction have since been collected in full.

. . . . . .

I came here in 81. I have been engaged in the banking business in Harlan County from 1881 to 1897. Their business has been generally with a farming community. As to the farmers, the way we did, if we considered them good and they wanted an extension, we extended the notes, if we did not need the money. As to Byron Prickett, he was considered good at the time the note was given and I think he would have paid it, if the bank had continued to run. But on account of crop failures he was unable to have made it when it was due.

I think that there were others that could be classed about the same, there were some that would not pay if they could. Some of the country bank paper as a reality needs nursing

and a lenient policy, rather than severe measures in order to result favorably. In some cases this is not advisable. The J. A. Palmer note has been paid in full since the bank closed its doors.

The Nick Vincent note part of it was sold by the receiver at auction and part of it the receiver has yet. I have heard that Mr Vincent and his son control several hundred acres of land in Oklahoma.

When we first knew Hugo Neubar he was good financially, honest and industrious, but he lost about everything he had one night in a flood. He now resides ar St Francis Kansas.

As to the transfers of property made by Burton & Harvey to C. P. Dewey, the property consisted of real estate, of land
13 and town property. George's farm near town, 1600 or 1700 acres, property in town and land near Atwood, Kansas, and a piece of land in Harlan County that sold for $2,000. Also tax certificates and first mortgages that you had advanced. The par value of about $100,000 in addition to the real estate. 421 acres of Mr. Harvey's land near Arapahoe, and 320 acres in Phillips County, Kansas. At the time this property was transferred, it was considered more than ample security to the bank and to the Deweys. In Dec. 94 I do not know how the Deweys considered it. It was considered so by the rest of us.

Q. Mr. D. O. Hedlund the receiver has testified in his deposition that George Burton and A. E. Harvey and M. F. Burton were absolutely insolvent in Dec. 1894. Was such the case in your opinion?

A. We expected to get through all right in 94. We expected a settlement with the Deweys, a payment of indebtedness to them, by turning over property, and A. B. Dewey was to turn over the certificate as he promised to do, and C. P. lead them to think he would settle.

Q. Mr. Harvey:—Is it not true, Miss Burton, what we
14 considered ourselves a large amount over and above all our indebtedness all the time from 1890 to 1895? A. Yes.

If a bank has plenty of money and they can afford to wait, the fluctuations that occur do not affect the par value of the bank certificate. I do not suppose there is any country where they fluctuate more than they do here. It depends on rain.

There was a statement made out and sent to A. B. and C. P. Dewey when they bought the stock of the bank of all notes in the bank giving the value of each note which was sent Messrs. Dewey. We thought the notes about as the statements showed them.

. . . . . .

M. F. 15 *Re Examination.*

Q. Is it not true that all the real estate pledged and deeded to the Deweys to secure the indebtedness of Burton & Harvey to the Deweys and the bank they mortgaged to other parties?

A. Not all of it. There is one piece of land 7 or 8 miles from here that sold for $2,000. Then 160 acres in Republican sold for $3,000. I think the Deweys got the money for these two tracts of land. I think the Deweys got the $2,000.

There was more real estate and collateral and property pledged to the Deweys. I do not know how much.

Q. Did you carry people along while in the bank in 94, 95, 96, and 97 and when you were needing money so badly, because the notes were uncollectible, or because of sympathy for the debtors? A. We did not carry them for sympathy.

Q. Why did not Burton & Harvey and their representatives pay their indebtedness in 94 and 95? A. Because they were not able to pay.

M. B. HOLLAND sworn.

16 My name is M. B. Holland, residence Orleans, business Lumber. I did business with the First National Bank of Orleans from 1892 until near the time of the failure. I had on deposit four or five thousand dollars at one time. When the bank failed the bank books showed a credit of eight cents. I suppose my deposit was paid off by my drawing checks out.

Answering the question "Did you buy the Dunlay and Gibbons notes for about three thousand dollars", I think I did at some time buy such a note secured by real estate mortgage of Mr Burton.

Q. I hand you what purports to be a copy, which is attached to the deposition of J. A. Randall showing bills receivable in the Bank Dec 1 1894 and those in the bank when it failed. Please look these over, or if you have already examined them, state whether you are acquainted with the solvency or financial condition of the makers of the notes December first 1894?

A. I have looked over the list and without security to make them good I would not consider to exceed between $10,000 and $11000 at most as good. I think I was acquainted with the

financial condition of a majority of these parties in 1894. I would consider $35,000 to $40,000 would be a reasonable sum to lose in the amount here.

17 *Cross-Examination.*

The date of the assignment of the Dunlay and Gibbons mortgage to the witness is February 1896.

. . . . . .

CHARLES T. SIMPSON sworn.

22 My name is Charles T. Simpson, aged forty, attorney at law, of Orleans, Neb. Have resided in Orleans sixteen years last past. I was acquainted with Geo W Burton, formerly president of the First National Bank of Orleans. I have at different times been employed by the bank as attorney.

I have met both of the Deweys, C. P. and A. B.

Q. I hand you what purports to be a statement of certain of the bills receivable of the Bank, December 1 1894—bills receivable owned by it when it failed. . . . . Please state, if you know what was the financial condition or solvency or insolvency and the value of the makers of said notes.

A. The list of notes handed me shows a total footing of
23 $49,150.41. In my opinion $9,000 of the notes were reasonably good, and might be called commercial paper, December 1 1894. The balance of the notes on the list would not be considered by business men as commercial paper.

Of the paper here listed, in December 1st, 1894, about $40,000 was bad; about $9,000 good in round numbers. I base my opinion on the different parties' reputation for paying their bills, and their ability to do so. I have had more or less dealings with nearly all of the parties on the list, and am acquainted with the credit, financial standing and reputation of nearly all of them.

. . . . . .

Cross-Examination.

24 . . . .

Values fluctuate here as elsewhere. Men's financial conditions change nearly every day. . . . . I think the financial condition in 1894 was the worst that it has even been since

I have lived in the state of Nebraska—some twenty years. In this locality it has been for the better since 1894.

In 1894 Arthus C. Ellis was a young farmer just starting in business for himself. I don't think that he was possessed of more than a team, some farming implements, perhaps a cow and two or three hogs. He was at that time execution proof, but honest and honorable, and had the reputation of paying his debts. I inserted his name among the list of those that were
25 good. I knew very little of J. C. Gaddis. He had but little. W. T. Gillilland was considered good. I was not personally acquainted with him, but our understanding derived from a conversation with R. R. Pate that he was good, though very hard up. J. M. Hyatt was absolutely worthless financially. J. M. Hyatt went to Washing, and as rumored out here, drew a good salary in connection with a liberal pension, and absolutely refused to pay any of his Harlan County obligations. I am acquainted with Jonas Hedman and his financial condition, N. C. Vincent, Geo. W. Warner by correspondence, was acquainted with E. P. Young, and his financial condition was good. M. T. Stowell is a good citizen and a good man, but those old obligations that he contracted in 1890 and before, he was unable to pay, and always has refused to pay.

J W Stromberg—the old gentleman—in 1894 was very very slow pay, but honest and honorable, and I think financially responsible, though about that time he was unable to realize on the property that he had—some land—and so was very poor pay.

Re-direct.

26 My knowledge of Vincent's financial condition was derived principally through my conversation with Geo. W. Burton. I consider the notes absolutely worthless. I think they have been for twenty years.

Geo. W. Warner is execution proof and will see to it that he never gets in a position where he has to pay those notes. . . .

27 M. T. Stowell is a carpenter here; a citizen of good standing who meets his current obligations. In about 1890 he engaged in business—mercantile business, and failed. There are many of those obligations out against him. He never intends to pay them, and could not if he would.

Jonas Hedman was a farmer who owned a farm worth $1600. or $1700 It was mortgaged for $1300. He struggled along from about '92, I think, to 95, when his farm was taken

from him, the indebtedness against the place exceeding $1500. He left the country.

H. O. Sitler was a clerk in the employ of "Burton & Harvey" while I knew him, who drew good wages, but had a hard time to make both ends meet. He lost his home through a mortgage foreclosure and left the country.

The State Bank account is considered worthless, and also Mr. Whitney.

28 This note of S. B. and M. J. Kirkpatrick was worthless. The note is over seventeen years old.

Ferrell & McDonough were contractors. That note I think possibly dated from about 1890. I classed it as bad—worthless.

Interstate L. & T. P. $5000 was, as I supposed, Geo. W. Burton. I classed that as bad.

V. B. Beem in 1894 owned some little property. It was just
29 about that time that he lost it all. I cannot just recall when he left here. It was just about 1894 that he lost all his property, from which loss he has never recovered.

H. Deadbinderfer, $111.90, owns an eighty-acre tract of land, the same being mortgaged. He is execution proof. He pays very slowly, and with extreme reluctance his local bills at the present time and the same in '94.

Thomas Lorimer, $600.; in 1894 that amount could have been collected by execution. It was not paid because he was not able to pay it. He was asked repeatedly.

J. T. Lampson, $175.65, was and is a very poor man; it is classed as worthless.

L. A. McNeal, $934.70, in 1894 was worth something. It was secured by chattel mortgage on a printing outfit. I think McNeal considered it worth about $150. but Burton considered it worth more than that. They could not agree. I think McNeal offered, $150 as payment on the claim about that time. The claim was sold at the Receivers sale for I think $31.

H. J. McKee, $563.37; in '94 that note was absolutely worthless.

I do not know Philip J. Martin.

B. B. Mills, $2000, in '94 I think that note was worthless. In '95 I think it was worth something. In 96 and ever since it has been worthless.

30 *Re-cross Examination.*

. . . . . .

There may have been collateral for the major part of thes notes. There was for some that I know of. There was a goo many that I know of to which there was no collateral.

. . . . . .

Of my own knowledge I knew nothing about Geo. W. Wa ner, in '94.

Re-re-direct.

The knowledge that I have of Warner and Vincent is a purely hearsay. I have had several talks with Mr Geo W Bu
31 ton commencing about 1894 in regard to some of the large notes held by the bank, and I am at a loss to distinguish ju what information I gained at that time; that is, prior to D cember 1894, and information imparted to me by Mr Burto while we officed together the last two or three years of his lif We have some of the notes now in our hands for collection, th property of the Chemical National Bank of New Yor
32 . . . . . I never saw Mr Burton for ten months befo he died, but previous to that I frequently talked within him i regard to these notes.

W. S. MORLAN sworn.

I am fifty-four years of age, an attorney at law, of McCoo
1 Nebraska. I have resided in the state of Nebraska since 186 first at Plattsmouth, next Crete, in 1871 at Lowell, in 1874 Arapahoe, Furnas County, in 1879 I went to McCook a have resided there ever since. I think Arapahoe is about miles from Orleans, and McCook possibly sixty' I was w acquainted through that country—about Orleans—along abo that time. I resided at Orleans about 4 months of this tim
2 along in 1874, and during all that time from 1874 up to abo 1885 I attended district court in Howard County and was w acquainted through Howard County and Furnas County a all the counties along the Republican River, Orleans is in Ha lan County. I was acquainted with the officers of the Fi National Bank of Orleans, George W Burton and J. A. Rand and Miss Burton. I have met A. B. Dewey. . . . . I we

with a man whom I believe I had once or twice before met, known as Dewey, at his request, to the First National Bank of Orleans, to make an examination of the paper and determine the financial condition in my opinion, for his information, of the bank. The exact date I am unable to state. And I went
3 with only one person, and never went there but once, and if the initials of this man Dewey is A. B., then I was there with A. B. Dewey. I dont remember what his first name was. As near as I can remember I first asked Mr. Geo. W. Burton, who was president of the bank, if he had any objection to my examining the assets of the bank. I told him that Mr. Dewey had suggested that he would like for me to examine the assets and give him my opinion as to the value of the assets. I told Mr Burton further that if he had any objections to it, owing to the friendly relations that existed between us, that I did not want to make the examination. Mr Burton told me that he had no objection and I thereupon had, I think, a Mr. Randall, who was there, get the notes and mortgages and make a statement of what they considered the assets of the bank, and the larger notes I examined pretty carefully. The notes of small amount I did not pay much attention to them. I came to the conclusion that the bank was worth a large amount less than
4 nothing. . . . . I told Mr Dewey as near as I can remember that I believed that any one who held the stock would be liable for the full value of the stock on account of the condition of the bank; that is, as a stockholder he would have to pay the full assessment, at least, to make the bank solvent. That was my opinion then. I think I was acquainted with most of the makers of the larger bills receivable held by the bank; and while there I made some inquiries about others that I was well acquainted with. I think I made the inquiries of Mr Randall and Mr Burton. I dont think I remember anything about Mr Dewey taking collateral, or about advising him to take collateral to secure the payment of the certificates of deposit he held of the bank.

In 1894 my recollection is it was considered one of the dry
5 years—as near an absolute failure of crops in that country as there has been since I have been there. In 1894, money was scarce, and the majority of persons there had no securities on which money could be readily borrowed.

Testimony of F. S. Eberhart.

F. S. EBERHART sworn. on behalf of complainant.

1 My name is F. S. Eberhart, age 54, present residence Corning, Ill. business, real estate and insurance. In 1894, in December, I resided in Chicago, and was engaged in the real estate and insurance business. My office then was 107 Dearborn street. I am acquainted with C. P. Dewey and have been since about the time you mention, December 1894. I never met his step son F. L. Jewett.

Q. Do you remember ever trading for or purchasing any stock in the First National Bank of Orleans, Nebraska, about that time from Jewett or from C. P. Dewey? A. Not myself.

Q. I mean did you negotiate the trade or have anything to do
3 with it? A. Yes.

Q Did you make that trade? A Yes. My father, L. Eberhart, Mr. Bubs and Mr. Kendig were interested in real estate and Chicago loans, and there was a trade made with Mr Dewey, and I negotiated it. I came to be brought into contact with Mr. Dewey through an advertisement in the paper. I think it was the Tribune. I should say it was within a few days or a week before the trade was entered into with them, that I saw the advertisement. I do not remember the purport of that advertisement. Simply to exchange bank stock for real estate, something to that effect. I dealt with Mr Dewey—C. P. Dewey—and he offered me a trade on Chicago Lawn property with bank stock and other real estate, and assuming the encumbrance, and cash—one trade. There was two trades made; another following that deal. This Mr. C. P. Dewey
4 here is the one I talked with. At that time I understood that Mr Jewett owned the bank stock. I never saw Mr Jewett. I think Mr. C. P. Dewey told me that Mr. Jewett owned it. I remember seeing Mr Killen present and talking with him. I had some talk with him. Mr. Dewey was in the room at that time. I conversed with Mr C. P. Dewey as to both of the trades. I think the time between the trades was a few weeks. At the first sale there was traded five acres in Chicago Lawn, Eb-
5 erhart, Robinson & Goods Subdivision, in I think it was block 2. It is on 59th Street, or 58th Place rather, near 59th street. It is southwest of the city. The consideration of the sale was $12,000. There was an incumbrance on it of $5000 which was to be assumed; there was $2000 in cash to be paid; $3500 of
6 the bank stock given, and 160 acres of land in Kansas for $1500. I think that was about it. The chief inducement for

making that trade on our part was to get rid of the property. T
It had an incumbrance on it of $5000 and the parties interested outside of my father had hard work in paying the interest. I never made any inquiries as to this bank stock. They showed us a report of the condition of the bank; it was a report of sometime quite a while before the trade was made. As far as I can remember the capital stock of the bank was $50000. We made no inquiry as to the amount of deposits at the time the trade was made, and wrote no letters about it. Mr. C. P. Dewey said nothing about the condition of the bank, but the
7 printed report. I did not inquire as to whether the bank had paid a dividend for a year or two. I dont think I was told about it. As to the value of the land in Rawlands County Texas we made no inquiries specially, only we had some in the same county down there. I judged from that. I was not personally interested in this deal. It was made for other people. Of the bank stock, Mr. Dubs got a share of it, a third of it, Mr. Kendig a third of it, and my father a third of it.

In the second trade, there was 31 lots adjoining this block that I spoke of, south of it, with an encumbrance of $4000, and there was to be $2000 paid and $3000 bank stock; that would make $9000. In this trade the same parties were interested and the same conditions. The principal inducement to get rid of the encumbrance. There was no land in on that trade. I do not know that the mortgages on the property covered by these transactions have ever been paid.

8 Of that stock, my father took one-third. I think that is transferred to Mr. Collins.
ferred to Mr. Collins. I don't know to whom Dubs and Kendig transferred theirs. Mr. Collins lives in Chicago Lawn. I thing he got $400 for it, and it was afterwards taken up again—put up as collateral with me, in that sense; that a regular sale; collateral for $400, and then it was paid off afterwards. That is, the $400 was paid off and the stock was never returned.

Q. I call your attention here to certificate number 104 of the stock of the First National Bank of Orleans, Nebraska, that is for 20 shares, and ask you if that is one of the certifi-
9 cates which you bought at that time? It purports to be assigned by Fred L. Jewett to L. Eberhart and by L. Eberhart to A. C. Kendig. Do you remember it? A. That looks all right. The signature at the bottom is that of L. Eberhart.

Three thousand shares of stock were turned over on the second deal. That means thirty shares I suppose, and 35 on the other deal.

F. s. 10 *Cross-Examination.*

Mr E Eberhart and Kendig owned at one time 10 acres. That was a subdivision, named Eberhart, Robinson & Good, I think. There were trading part of that subdivision. The streets were graded. There were no buildings on it. The lots were not producing an income. As to the starting of the second trade, whether it was suggested by Mr Dewey or by myself or some one in the office, I dont remember just as to that. I dont know that any of the first mortgage has been paid. I dont know anything about it, simply assumed it. That is right of either encumbrance.

My understanding and recollection was that Mr. Dewey was the principal man that I saw at the time in regard to the trades. I had some talk with Mr. Killen and also with another gentleman in the office. There was a contract made first. Some time after the contract was made the transaction was closed, by our parties making deeds. . . . . .

I dont remember the time the bank reports were made, but I asked them if they didn't have a later report, and they said
13 they didnt have it or something to that effect. There should have been some later reports; these might have been the last published reports as far as I know.

Eberhart and Kendig and Dubs each had a third of that
14 property, each a third in the ten acres. Prior to selling this father had sold some part of his, and we left Mr Kendig and Dubs in the 31 lots. They had the 31 lots, in the second deal. At that time Mr Kendig had other property up northwest of the city. He had a one-tenth interest in a subdivision up northwest. He was not a real estate dealer. His business was a photographer. Mr Dubs was a minister. He had about the same interest in other property that Kendig had. Mr Eberhart had about the same too, and then he had other property outside. Eberhart had more interest in the property north than these men. He owned property at Chicago Lawn too. There is 40 acres there at Chicago Lawn and then this other is 10 acres. The price paid for the lots was a fair price. In
15 this trading . . . the question of values was debated.

Q. What was the price that you first asked for your prop-
16 erty you sold? Was it not more than $$12000? A. I presume it was.

Q And after some negotiation is was finally fixed at $12000? A $12000.

My father still owns property in that subdivision, some of it.

17 *Re-direct Examination.*

My father deeded his interest in the land in Rawlins County, Kansas, to Mr Dubs. Mr Kendig did the same. Mr. Dubs simply paid the back taxes on it and there was a deed made to him for that consideration. . . . They offered some (property) so cheap down there that it scared us.

Q Now you speak of your father being interested in certain property and Dubs in certain property and Kendig in certain property. All that property was heavily encumbered, wan it not? A. Yes sir.

Q And all they had was the equity? A Yes.

Re-cross Examination.

18 Mr Eberharts interest in the 40 acres I think was incumbered at that time, small mortgages on different lots. There were certain lots encumbered, with a house on it. I think the lots were all encumbered but some did not have improvements on. He would build a house and put an encumbrance on it and he would sell it and the party that bought it assumed the incumbrance. Perhaps there were 40 or 50 lots of the whole 40 acres encumbered; I dont know.

Q That would be about 380 lots, and you think 40 or 50
19 might possibly have been encumbered? A I think so. My father was a man who bought and sold real estate. He acted as agent in some cases. But his principal business was a dealer in real estate. At that time, 1894, my father resided in the city somewhere. He rented his home. I don't think he had any city property outside of this.

20 *Re-re-direct Examination.*

Q. Wasn't there a purchase money mortgage out for part at least if not all of this 40 acres? I mean when he bought it did he not give a purchase money that had not all been paid off at that time? A It has all been paid. That is the Eberhart, Kendig and Dubs subdivision you refer to?

A Yes, how much was there of that? A 20 acres, I think originally.

Q And for the other 20 had there been any mortgage out? A Well, part of this subdivision had 20 acres originally and it was divided—there were six interests originally, three

got ten acres and three the other ten acres, the west half of it.

Q. Now what did you estimate the total encumbrances on all property in which Mr Eberhart was interested, at that time? Before this deal? A. About $30,000.

21 *Re-re-cross Examination.*

Q How much was the land worth at a fair valuation not a sacrifice price? On which this $30000 was secured, I mean in the two subdivisions, in 1894. A. At least twice that much.

Levi 22 LEVI EBERHART, sworn on behalf of complainant.

I am 79 years of age, residence at present Fairview, Cook County, Am still trying to do a little real estate business.

Q. Are you the Eberhard that made a trade with either C. P. Dewey or Jewett for some say 65 shares of stock in the First National Bank of Orleans, Nebraska? A I am one of the parties; there were three of us in the company in that, Rudolph Dubbs and A. E. Kendig and myself. All the negotiations were carried on by my son. It seems to me I saw
23 C. P. Dewey at the time the matter was closed. I was at his office then, and it's my impression he was there.

Q You have heard your son describe the trades and the negotiations on the stand have you not, today? A Yes sir.

Q Has he stated the, so far as you were brought in contact with them correctly? A He has, so far as his trade is concerned.

I could not get any statement in regard to the value of the bank stock that was transferred to us by either C. P. Dewey or Jewett, except as they represented it. One of the reports made to the Comptroller of the Currency was all the data I had.

Q. What was the principal inducement for selling your property and taking this bank stock? A Well sir, the property at that time was on a downward tendency—and the principal reason in making—accepting that trade was on account of the incumbrance on the property; the incumbrance and the cash of course.

24 Q. What valuation if any did you place, or were you able to place upon this bank stock? A Well sir, I don't know that

we placed any special value on it. We thought if we could make something out of it it would be all right and if we could not, we would have to do the best under the circumstances that we could.

Q. What was your financial condition in '94, say at that time, and in the event an assessment had been made upon the stock or liability sought to be collected for the fair value of the stock Could you have paid it at that time? A I dont think I could.

Q You had some property did you not? A Yes.

Q Was it encumbered? A Yes, I think it was nearly all encumbered.

Dubbs had an interest, or Kendig I should say, had an interest in the subdivision of Fairview. That is where I reside at present, and he owed his father money that he had borrowed on some of his deals and turned it over to his father and pay him off what he owed him, and he has not any special property that I know of at present except the house where he lives at Naperville and that is pretty heavily encumbered. I dont know so much about Dubbs; he lost a good deal of money too. He has some property that I know of but in order to help himself out of the losses he had to borrow a considerable amount of money which I understand he still owes.

Q Was he or was he not, embarrassed at the time these
25 trades were made in 1894 and 1895? A. Yes he had been embarrassed.

Q What losses if any have accrued to you? A Well, the depreciation of values and in sums that were due me I lost over $28,000.

Cross-Examination.

Q How much property did you have—you had interest in two subdivisions did you not, three subdivisions in 1894? A That subdivision contained the 20 acres

Q One of them? A Yes, the one that this refers to, twenty acres and there were six parties that united in buying that and subdividing it, and so it didn't seem to sell; the property was going down.

Q What did you pay for it? I think we paid $2400 an acre, I think, as near as I can remember.

Q And then that was as unsubdivided lands? A Yes. We subdivided it. The three of us took ten acres and the
26 other three ten acres. I had a subdivision of 40 acres out

of Levi

there in Chicago Lawn, that was bought for $10,000. I bought that about 12 years ago. No, it must have been before that. My brother John got half of that at the time. I sold lots in that subdivision. I sold some for $200 a lot, and some over and some less. That was not of the blocks, but it was perhaps about the average for the lots. I had 20 acres. In 1894 I
27 think it was nearly all encumbered. I should think the encumbrance was more than $10,000 but I cant just say the precise amount. Some of the encumbrance that we put on was put on when we built houses, I built two houses there and the
28 incumbrance on one of the houses was $2300 and $1700 on the other. Those are the only houses I built in that subdivision.
29 . . . . . All the outside lots were encumbered except perhaps seven. I know of 15 lots that there was an encumbrance of $1500 on, $100 a lot. These incumbrances had not been paid off. I lost the 15 lots I just mentioned by foreclosure. Outside of those two subdivisions mentioned in December 1895, in Eberhart & Royce Subdivision of Fairview, about 120 acres there have been subdivided, and I still have some interest in that. Those were the only three subdivisions. In 1894 Mr. Dubbs, Mr. Kendig and Mr. Royce and a son of
30 mine each had a ninth interest in it, and I owned the balance of it. They owned four ninths and I owned five ninths. It cost about $5 an acre at the time it was bought. In 1894 it might have been worth $100 a lot. There were 120 acres altogether in that subdivision.

Re-direct Examination.

31 The 120 was all encumbered. I cannot just state how much the incumbrance was, but there was—we had paid from year to year some of it, and I think the encumbrance at that time was pretty near $20,000. The two houses built out there at Chicago Lawn and one at Fairview were all that I ever built. The mortgages were not only on the lots on which houses stood, but on the vacant lots too that had not been sold.

32 *Re-re-cross Examination.*

In what was known as Eberhart's Robinsons & Good's subdivision there were 48 lots in a block. I had a third interest in the subdivision known as Eberhart, Robins & Goods subdivision of the east half of the south west quarter of the north

east quarter. There were ten acres in that subdivision. In the Testimo Eber
total subdivision there were 20, but we only had an interest
jointly in ten acres. The asking price for some of the lots in
that subdivision was $300 to $350 but whether there were any
sales made at that price I don't know. . . . . I sold
several lots. I sold some to a party but never got any money
33 out of it. The consideration was $300. The 40 acre tract was
taken before 1894. . . . . .

Re-re-re-direct Examination.

There were two additions in Chicago Lawn, There was 10 acres in one, and that is after we made the subdivision you know. There was six of us and then we divided and three took the east ten and we took the west ten. In 1894 there was not much sale for this property. We did not sell any of that property in '94 except what was sold to Mr Dewey, not in the ten. I sold several lots in the other. I generally sold them on time, and took a mortgage sometimes and sometimes I sold them
34 on contracts. Some of those mortgages were paid and some not. But all this property I held in all these editions was heavily encumbered.

A. B. DEWEY sworn, and questioned by attorney for com- Testim Dew
plainant.

35 My name is Albert B. Dewey. Age, 56. I am in the real estate business. I reside in Chicago. C. P. Dewey, defendant in this case, is my brother. I was associated in business with him, in the firm of C. P. & A. B. Dewey. That firm was organized about 1880, dissolved in 1891, the 1st of May. We continued to office together up until the 1st of May. Well, I continued after I got another office, but I didn't occupy it until the fall of 1891. C. P. Dewey kept the books of the firm after the dissolution in May 1891. The office of C P & A B
36 Dewey at the time of the dissolution was Room 401-2 Chamber of Commerce Building. I took my room in the Merchants Building. That is diagonally across from our building. After May 1891 the relations of C. P. and A. B. Dewey were friedly, which continued up to the middle of January 1895. Stock was acquired in the First National Bank of Orleans,

of A. B. Nebraska; I have forgotten whether it was taken in the name of C. P. & A. B. Dewey originally, or the individual at that time; subsequently, it was taken individually, that is, divided;
37 it had been originally taken together. There were purchased at that time $26000, which would be 260 shares. I dont remember just how the 260 shares were issued. I think the date that we purchased it was 1890; 1891 I think it was—during the summer of 1891. At the time I purchased I think at the next annual election I was elected a director. I continued to be a director until in January, 1894. That is the last election held during the year 1894. In 1895 I dont know whether I was
38 elected or not. I did not serve. C. P. Dewey held the office of vice president of the bank.

Q. State according to your best memory when and to whom you first transferred any of that stock? A I think it was transferred in February 1893.

39 Q How many shares did you have at that time? A I think I had 115 shares.

Q And can you tell me to whom you transferred it? A I think I transferred 50 shares to H. H. Shufelt and 55 shares to A. H. Shufelt. I retained 10 shares.

Q I call your attention to certificate No. 81 and 82 and ask you if those are the shares that you transferred to H. H. and A. H. Shufelt? A I think they are.

Q Now I will ask you if you know at what time Mr. C. P. Dewey transferred his stock to F. L. Jewett? A I think it was in February 1893.

Q I will ask you if as a matter of fact the stock of C. P. Dewey was transferred to Jewett on the same day that your stock was transferred to the Shufelts? A I could not answer whether it was transferred exactly on the same day or not.

Q Have you any knowledge of it being transferred about the same time? A Yes sir.

Q What is your knowledge relative to that? A Well, a
40 general conversation that—I think I examined the certificate book when I was out there.

Q. . .And did you have any conversation with Mr C. P. Dewey
41 relative to the transfer of your stock and his stock. If so, state what that conversation was. A Yes, I think I did. I do not know that I can relate it. We talked the matter in his office, in the Chamber of Commerce building.

Q Did you ever advise with any one, with any attorney relative to the transfer of this stock? At that time? A I think

I did. I think I asked Mr. Runyan about it, E. F. Runyan.
42 Q Was it agreed and understood between you and C. P. Dewey that you should confer with an attorney. Did he know that you were going to consult an attorney? A Well, I don't remember about that. We may have talked about it. I could not say that we had a direct conversation about it and then consulted the attorney afterwards.

Q What did Mr Runyan advise you? A I asked him about the double liability on the stock, and he told me that all that
43 was necessary to do was to transfer the stock to someone else.

Q Did you tell Mr. C. P. Dewey what Mr. Runyan had told you? A I think we had some talk about it.

Q Had Mr. Runyan—or was he the counsel of C. P. & A. B. Dewey, had he been? A Yes sir.

Q Did Mr C. P. Dewey know that you were going to take counsel and advice relative to the transfer of this stock with Mr Runyan? A I don't remember whether he did or not. I think probably we discussed the double liability question.

Q State as near as you can exactly what Mr. Runyan said to you? A Well, I asked him about the double liability on the stock and he simplu said that it was all that was necessary was to make a transfer of it—well, to any other parties.

Q Now did you tell Mr. C. P. Dewey that you had been so advised by Mr Runyan? A Yes sir I think I did.

Q Now were these transfers made to Shufelt and Jewett
44 pursuant to this advice? A I think that is what prompted it.

Q How long after that advice was given by Mr Runyan was it before you transferred your stock to Shufelt? A I think it was in a few days.

Q How long after was it before C. P. Dewey transferred his stock? A I think it was transferred about the same time.

As to the coversation as to the double liability, with C. P. Dewey, I dont think I can state this conversation so long back. I was in daily communication with him, that is, with his office. Talked over matters in which we were interested. What occasioned us to consider and discuss this question of our double liability as a stockholder was, it was the beginning of the tight-
45 ness of the money market and a number of banks failing and being tied up, and the bad conditions of the west that were injurious to all banks.

The condition for instance as to the crops out in Harlan County in and around Orleans, in 1893 and 1894, were pretty bad. There had been a failure of crops in 1893, 1894, and 1895.

A. B. Q Now do you remember about that time taking for the benefit of C. P. and A. B. Dewey the deeds of most of the property of Burton and Harvey? A Yes sir.

Q Now I hand you what purports to be a certified copy of a deed bearing date the 6th day of February, signed by George W. Burton and Alma H. Burton and ask you to look it over
46 and state what property it covers. A This covers lots owned by Mr Burton in Orleans.

There was a verbal agreement made that the deed should not
47 be put on record for some little time.

Q Is there any significance in the fact that the date of this deed is Febuar, 6th, the date when you transferred your stock to Shufelt, and the date when C. P. Dewey transferred his stock to Jewett? A Well, only to have an additional security
48 to the bank, inasmuch as Mr Burton had guaranteed the assets of the bank.

Q Had Mr Harvey also guaranteed the assets of the bank? A Yes sir.

Q At the time of your purchase of the stock had a list of the bills receivable been made up and a guarantee been signed of the payment of all the bills receivable then in the bank by Mr Burton and Mr Harvey? A Yes sir.

Q What caused you to put this deed on record September 2nd 1893? A I think C. P. Dewey and Mr. Holmes were out in Kansas, and did that themselves. I dont know about it. I think we felt a little afraid that Mr Burton's creditors might levy upon it.

Q Was this stock held by you and C. P. Dewey and each of you transferred back, your stock from Shufelt to yourself, and from Jewett to C. P. Dewey, and if so at what date? A I think it was in September 1893. It was done at the advice of Mr. Burton.

49 . . . . .

Do you remember a letter of advice from Mr Burton with reference to the re-transfer of his stock? A Yes, he wrote in that it was owing to the panicky condition of the country that it was absolutely necessary to transfer the stock back in order to give the bank credit.

As to those letters now, I dont know whether C. P. Dewey
50 has them or where they are. The correspondence was always addressed to C. P. & A. B. Dewey, and C. P. Dewey received it, as I remember the arrangements, and I think he kept all the correspondence. He opened the correspondence first. I think C. P Dewey and I discussed the matter and concluded

that it was better to comply with Burton's request about the transfer of that stock back to ourselves.

Q Now then, when did you again—when did you and when did C. P. Dewey if you know, again transfer this stock; you your stock all except ten shares I think; C. P. Dewey all of his stock except ten shares; to the Shufelts and Jewetts re-
51 spectively? A I think we each transferred it in May 1894, I to Shufelt and he to Jewett. I talked to him about the transfer of the stock at that time. We talked about the propriety of making these transfers. The conditions of the west were getting worse, and we were somewhat alarmed about the outcome of the bank. The situation and this condition of the bank
53 was the subject of the conversation. C. P. Dewey said we had better be damned—he said we had better get out of the thing. I coincided in that opinion. It was decided on that we should—
54 that we had best make the transfer. There was a long general conversation about the conditions of both Burton and the bank. I dont believe I could relate them verbatim. Burton kept writing of the condition of the bank, that we should denationalize, and that something had to be done as the comptroller was after him constantly, so we concluded that it was best to transfer the stock. . . . The stated object in this conversation was that we were to get rid of the double liability
55 on the stock. Mr. A. B. Dewey so stated.

I remember I was going to Orleans in January 1895. Mr Morlan of McCook was with me. He is an attorney. McCook is 50 miles from Orleans I judge. Mr Morlan told me he had a wide acquaintance through that section of the country. We
56 at that time looked over the paper of the bank, the bills receivable. Mr. Morlan went over the paper with me. He told me after looking over all the notes and assets of the bank that there were not any of them any good. On my return to Orleans I saw Mr. Killen, C. P. Dewey's chief clerk, and told him of the condition of the bank there, and that he had made
57 a mistake in sending that certificate of his out for collection; certificate of deposit, held by C. P. Dewey, and sent out by express. I dont know whether C. P. Dewey learned of Mr
58 Morlan's opinion except that I told his chief clerk. Mr. Morlan told me he was acquainted with all the signers of the paper, and the conversations that took place between him and Mr Burton, the president of the bank, and led me to believe that it was hopelessly insolvent.

At that time I held $3000 certificates of deposits in that
59 bank. I asked C. P. Dewey prior to the January meeting in

A. B. 1895 to take my proxy out and vote my stock, and he said that he would not be able to attend the meeting and I had bettter send mine out and he would do the same. I sent my proxy out. This was in December 1894. I sent my proxy by letter to Mr Burton and stated that C. P. Dewey would send his out, to be voted at the annual meeting, and then it was that I first learned that he had disposed of—that C. P. Dewey had commenced a disposition of his stock. I didn't know that—He had not told me that he was going to sell and it was a good deal of a surprise to me, as I thought we were acting together in the investment. So I immediately went out and Mr Burton asked to buy the remaining ten shares that I had, to make his brother John a director of the bank. I sold that to him, and then I said to him that inasmuch as I had sold out of the bank that
60 I would either make a loan to the bank or he could pay me my money on my certificates of deposit, whichever he desired. He said if it suited me just as well he would like to have me make the bank a loan—he to me—and he would give me collateral just as he had given other banks or individuals. I had held the certificates a year or more. I asked him for a bank's note, and he says that that was a bank's obligation or a note, all that they could make, and so I did not change it, just left it in the same form,—the certificate. I got at that time about $3000 collateral, only a few of which I was able to get anything out of.

After C. P. & A. B. Dewey dissolved in 91, we continued to write the name of the firm for three or four years after, I think until about the fore part of 1895. I took letter press
61 copies of my letters, I put them in the C. P. & A. B. Dewey's book; that letter book was in C. P. Dewey's office. I saw the letters that he wrote, and he saw the letters that I wrote.

Cross-Examination.

Q Did C. P. Dewey see any of the letters which you signed with your individual name? A Not when they pertained to my individual matter.

Q Did there any of them pertain to business that he was interested in and signed by yourself alone? Do you remember any such letter? A No, I do not know that I can designate any particular letter.

I don't remember when the original stock was bought whether it was transferred to and the certificates issued in the name of C. P. & A. B. Dewey or not. It was bought and paid for and carried on the C. P. & A. B. Dewey books, notwithstanding

the fact that C. P. and A. B. Dewey had dissolved partnership. This was unfinished business.

63 Q As a matter of fact there were no certificates ever issued to C. P. & A. B. Dewey, that is in the record. Your stock was issued to you and C. P. Deweys stock was issued to him. Now I will ask you whether in this consultation about transferring your property in February 1895, you consulted with C. P. Dewey in regard to transferring your real estate here in this city to Abby Shufelt? A No sir. I did not have any conversation with C. P. Dewey from the middle of January 1895 on up to this date.

I think I have a letter from Burton informing me that C. P. Dewey had sold out his stock among my letters some place.
64 I received that in December, 1894. The December meeting I think must have been the 2nd or 3rd. This letter was received the latter part of December. That was the first intimation that I had had that C. P. Dewey had actually sold the stock. I went out to Orleans a few days afterwards. I arrived
65 on the 11th day of January 1895. I had Mr Morlan meet me at Oxford, the station beyond Orleans. He went with me to the bank. I said to Mr Burton in as much as I had sold out my stock and had not any further interest there—Mr Burton had bought it for his brother John—ten shares. I had sold my other stock to E. B. Camp. Burton paid me a thousand
66 dollars for the ten shares, gave me his note for a thousand. I think possibly it was the same certificate of deposit, although I dont remember. He transferred to me certain notes as collateral security for these certificates, for this bank loan. When I was out there in January 1895 I asked to be paid for the certificates of deposits which I held to the extent of $3000;
67 those certificates of deposits were issued in possibly August 1893, for money loaned to the bank. When I loaned that money to the bank I took no collateral, they gave me a certificate of deposit, in 1893. The certificate bore interest. I carried that without collateral until in January 1895. Then in order to retain the money he said "I will make a bank loan, and I will
68 do to you just as I do to the bank at Omaha where I am borrowing money, or the New York Bank, and give you collaterals. I do not remember, but I rather think he issued a new certificate of deposit. I rather think he paid up the interest on the old one. So far as I know C. P. Dewey had no knowledge of my going out there, or of what I was doing in January 1895.
69 I believe it was in May 1894 that my stock was transferred back to Shufelt. I think it was transferred from here. I was

ed A. B.

in Orleans sometime I think during the summer of 1894.
70 Then I learned that C. P. Dewey had transferred his stock from himself, that he had sent out the transfer. He had told me that he had put it into Jewett's name. I was in his office in December 1894 right along, but learned nothing about his making these transfers to these different parties throughout December, and that is what surprised me so much to learn that he had through another.

I was defendant in a suit brought by the receiver of this bank about the same time as the suit against C. P. Dewey, a suit claiming that I was liable for this bank stock which I held. The
71 case was settled I paying 60 or 65 per cent; I think it was between $6300 and $6400.

At the time I went and made this examination into the affairs of the bank with that attorney in January 1895, I went to see
72 whether I had better not settle the claim before they made a demand on me for a double liability or to litigate.

E. B. Camp was a real estate man here in Chicago. He paid
73 me real estate for my stock. That was a bona fide genuine sale, never any thought of being otherwise. He was a man of property I was told. I conveyed all but ten shares to that one man. I never knew the man. That transfer was made I think in January or February 1895, after my return from Orleans and
74 examination of the bank. I didn't communicate with C. P. Dewey after I got back.

The fore part of our connection with the bank they repre-
75 sented to me that the bulk of the assets of the bank and of the bills receivable were good. Mr Burton did not continue to do that the latter part, in 1894. At the time that Burton bought that stock of me and gave his note, he didn't state that the bank was all right. He made no representations at all about the bank. I had looked at the security before then—each time I would go out there. I never signed any of the reports to the comptroller as director. I saw copies of the reports. I got printed copies every time they were issued, or at least occasionally. I supposed they
78 were correct. I discovered nothing which led me to believe that that bank was insolvent in any of those examinations. I found on inquiring from others that they were no good, were worthless.
80 There was security given to cover those. Burton and Harvey were heavily in debt and in order to keep up the bank had to borrow money from us in order to pay their individual indebtedness, to outsiders, to keep them from closing in on Burton and Harvey and closing the bank. That was the way they got heavily

in debt to us only. That is the way I first got into this transaction at all. What I advanced and C. P. Dewey advanced and Mr Hogg advanced in the first place amounted to $26000. It was supposed to clear up Burton and Harvey's indebtedness and the bank's indebtedness, but we found claims to the contrary;
81 we found that that was not the case, that the indebtedness was far in excess of what was represented. Then we advanced more money, and we found a new indebtedness cropping up. This began to develope the latter part of 1892 or during 1892. Burton and Harvey conveyed to us a large amount of their property sometime in February 1893 I think. Burton made estimates about the value of that stuff and got a real-estate man at Orleans.

Q Do you remember that there were reports on his home farm. A It was so exaggerated that I never put much of dependence upon his statements as to value.

Q Wasnt there some of it sold at about the price that they put upon it? A Yes, a piece sold which had been taken back.

Q Well, was that the time it was sold, at just about the price they put on it, was it? A One piece was.

82 I think he claimed that farm was composed of about 15 or 1600 acres. I think that was divided up into parcels a certain
83 value was put on but there weren't any sales made. I think Mr Young, the real estate man, was overestimating that property. I told C. P. Dewey that I thought that was an over estimate, and he said that the whole business was a good deal of chips and whetstones. That is about his expression.

Q How much did you advance upon those valuations? A I
84 think I must have advanced sixteen or eighteen thousand dollars, $18,000 interest [illegible] all.

Q You advanced about half of it? A Yes. Over and above the $26,000.

Q And when were you making that advancement of the $16,000 or $18,000, what time, what year? A We began making those advances soon after we bought into the bank, bought the stock we held in the bank.

Q Were not these notes that you afterwards advanced money to pay mentioned at the time of the purchase of the bank? A They said that each amount was secured by first class collaterals
85 of some character and we found that the collaterals didn't amount to anything.

The crop in 1892 in the west was unusually good, I think. In February 1893 things were dull, particularly out West. In 1891 and prior to that the crops had been bad.

y of A. B.

I think it was in August 1893 that I advanced the bank by depositing and taking its certificate of deposit $3,000. I took no
86 collateral for it. I think C. P. Dewey sent out $7,000 or $8000. He took no collateral. Then we had them return to him $5000 in a short period. The latter part of 1893 Col. Burton appealed to us to send currency there for fear of a run on the bank; that is when we sent this $11000. I think it was in '92 that they asked us to borrow, on the ground that they had more money than they could loan out. That money was mostly from Ohio, the part of Ohio in which we formerly lived.

88 *Re-re-direct Examination.*

I was out at Orleans on the 11th day of January 1895. Shufelt transferred and sold this stock to Camp; before doing that it had been transferred to Evans. Evans paid nothing for it. Evans transferred it to Camp. It was in January 1895 that Shufelt conveyed to Evans and Evans conveyed to Camp. The record shows that Evans transferred to Camp on February 26th 1895. It was transferred to Evans January 17th, 1895. A. H. Shufelt was a sister of my wife. H. H. Shufelt was her
89 brother. The transfer was made to them the 7th of May, 1894. They have paid nothing for it.

---

r of Fred

FRED M. SILLS, sworn on behalf of complainants:

90 My name is Fred M. Sills, I am 43 years of age, I am assistant secretary of the Illinois Trust and Savings Bank. Residence 2789 North Lincoln street, city. Have resided here (Chicago) about 15 or 16 years.

I am very well acquainted with values in the city of Chicago at the present time, as I have charge of real estate for the Illinois Trust & Savings Bank, and did so have charge in 1894. I am acquainted the the fair and reasonable value of property in Eberhart, Robinson & Good's Subdivision of the east ½ of the southwest ¼ of the northeast ¼ of section 14, township 38, range 13, being a part of Chicago Lawn property. That property is out on the Grand Trunk; it runs from 51st street south
91 to 57th about, lying on both sides of the Grand Trunk. We have a large block of that property to handle for the bank, have it for sale. I have seen it. There are 46 lots in block 2 in

said subdivision and in my judgment they are worth $150 apiece. That would make a total of $6900 for Block 2. I dont think that there is very much difference in the value of those lots today and the value in December, 1894, I think about the same.

I am acquainted with the fair and reasonable value of lots 1, 2, 3, and 4 in J. O'Bryant's subdivision of lots 5 and 8 in Conrad Seipps subdivision on the west hald of the northwest ¼ of section 25, town 38, range 13, Cook County, Ill. I think they are worth $15 a front foot. There is 200 feet on Seipp avenue, making in all $300. I think there is but little change in the value of those lots and in 1894.

92 I am acquainted with the fair and reasonable value of lots 1 to 12 and 19 to 25 inclusive and 29 to 34 inclusive, and lots 41 to 46 inclusive, in Block 3, in Eberhart, Robinson and Goods subdivision referred to above; I think there were 31 lots all told and in my judgment they are worth $150 each, making a total of $4650. Those lots are in Chicago Lawn, and only one block from the other referred to. I dont think that there is any change in value between now and 1894.

I am acquainted with the fair reasonable value of Lot 85, in Longwood's subdivision of the southeast quarter of Section 6, town 37 range 14, and also lots 23 and 24 in Block 10 in Ashland's subdivision of the north ¾ of the east ½ of the northeast ¼ of section 18, township 38, range 14, The value lot No. 85, in Longwood's sibdiv. is, I think, $1500. That's 100 feet front on Forrest avenue at $15 per front foot. The other lots mentioned were 23 and 24 in Block 10 Ashland subdivision. These are located at the northwest corner of 58 street and Marshfield avenue. I think the one on the corner is worth $650 and the inside lot $600, making a total of three lots of $2750.

I know the fair value of lots 43, 44 and 45 in block 1, in Richard S. Coxe's Jr., Subdivision of 10 acres in the south east quarter of the southwest quarter of section 17, town 38, range
93 14, Cook County, Illinois; These three lots are between 61st and 62nd street on Throop Street, and are worth $250 each, making $750 and are about the same value as in 1894. I have seen all this property.

Cross-Examination.

. . . . . .

Lots on Seipp avenue, Corner 72nd street. The street isnt improved at all; They have driven over the sod, there is a passage way across there, but it is very little used for the reason

Fred that there is no one house south of 72nd street on the other side of the street; about two blocks down the railroad occupies the street. They dont drive over that so that the passage way in the street is very poor. There was a cement sidealk laid in front of these ricks evidently, when it was first subdivided and
94 it is partly overgrown with weeds and dirt.

. . . . . .

As to the improvements there, The side walk would cost 60 cents per front foot—a cement sidewalk 60 to 70 cents, and the water would cost 30 cents a running foot; I didnt't figure on sewar. I am not sure there is a sewer there. My knowledge of the value is simply from going and looking at it, and from
96 inquiry from a real estate friend of mine down there who is handling that property in that subdivision. He has property for sale just east of there at $15 per front foot but didnt tell me that he had any in that block. I think theose would be on the cross streets. I asked a man in that neighborhood what they were asking for that real estate and he said $8 a foot. I didn't know the man. I have a lot for sale now in Woodlawn.

. . . . . .

There is no street car line on 72nd Street.

All the express trains on the Illinois Central that go to South Chicago leave the main line and curve off to 71st street and go east on 71st street across Seipp avenue. Bryn Mawr is the next station or two beyond Park Side. It is just further east than this location we are talking about. The improvements there are rather different. It is not a very good suburb. The property, what we call Bryn Mawr, extends right up to Seipp avenue.
101 Property is selling in Bryn Mawr at $50 a foot, I should judge. This is $15 because it is outlying; there is not improvements
102 there to make it worth more. I should judge this property is outlying from the main streets in Bryn Mawr about six blocks.
103 The next street west of Seipp avenue is Cornell, and west of
104 that, Stony Island. The nearest street east and west that there is a street car line (from this property) is the first street south
105 73rd street. And there is one on Stony Island Avenue. . . . . It takes about 20 or 25 minutes to come by train
106 from the station which takes you to this property on Seipp avenue from the heart of the city or the foot of Randolph street. We had for sale at Grand Crossing, 20 minutes out on the Illinois Central, within the last two or three years, about 16 acres
107 that we would have been glad to sell at $15 a foot. It was scat-
107 tered all around that old clock factory down on 76th street, Dawson avenue. We sold it for $200 a lot. The distance does not

fix the value of realestate—the time it takes you to go. . . .
There are very poor improvements around Seipp avenue. The
108 house across the street cost about $1800 or $2000. The Bryn
Mawr residences average I suppose about $2000 or $2500 possibly less.

S. D. LANE sworn on behalf of respondent:

1 My name is S. D. Lane, residence Orleans; I am interested in the banking business in Orleans—the Orleans Bank. We do business in what may be called the Old First National Bldg. The Orleans Bank, of which I am one of the proprietors, owns that building. We purchased that bank building from the Receiver, of the First Nationak Bank of Orleans, Mr. P. O. Hedlund. We also purchased the building and fixtures; that included the safe. We paid for the whole outfit, fixtures and all, $2550.00. I am acquainted with the value of real estate in this vicinity; have bought and sold land; we considered when we bought that property that we bought it very cheap. I would have given—before I would have let it pass—$8000 for it. To-
2 day I would not be willing to sell it for $10,000. We did not pay more for it simply because we could buy it for $2550. Mr Hedlund offered the building for $2000 and the fixtures and building together for $2550. This property was sold at auction to the highest bidder. Mr. Hedlund stated that he would sell for $2550 to Mr Means.

3 *Cross-Examination.*

That property was sold at public auction, after being duly advertised in the papers, and we were the highest bidder. Mr.
4 Ferguson, the druggist here, bid $2500, and then we bid $2550. I would consider this building suitable only for banking. That is one reason why I would have been willing to give $8000, because of its adaptability to my business as a banker. And then I wished to control the business—that is, control the building. Mr Means told me one morning that Mr. Beadland had offered the building, as I stated, for $200 and the ixtures and building for $2500. Then Mr. Means went direct to him and tried to purchase but found that he would not sell; that he would put it up at auction. Consequently we did not buy. I think we bought it sometime in the year 1899.

. . . . . .

Means. 7 EDGAR L. MEANS sworn:

My name is Edgar L. Means, I reside at Orleans, Neb. I am cashier of the bank of Orleans. The bank of Orleans do business in the Old National Building. I asked Mr. P. O. Hedlund if it was true that he had offered the bank building for $2500. I couldn't hardly believe it was, bit I didn't tell him that— and he said "yes". And just as soon as he told me that it was, I told him that I would take it, and asked him how he wanted his money, and he said that it would probably be a week, or it might be two weeks before the deed would be ready, and I waited a considerable longer time than that, and there didn't seem to be any deed forthcoming; and he said that he had referred it to the department in Washington, and he could not do anything until they acted. I am and was at that time one of the proprietors of the Bank of Orleans.

8 I am acquainted with values of real estate around here as much as any one, I guess. At this sale, there was a claim that the receiver had against the Capital National, and this claim was put up and not sold, and when he took it back and was going to put it down on the desk, I asked Beddeo to bid twenty-five cents for me, and as there was no other bidder it was knocked down to me. It was originally $315. I believe. There had been two payments made before I bought it; one of 10 per cent and one of five per cent. I think I have received a two per cent dividend on this certificate since I bought it. That was a little over $6.

Cross-Examination.

9 The sale of these assets was public sale, after due advertisement. Everybody seemed to know it. The price we bid was the highest price bid.

10 In the fall and winter of 1894 and 1895 were about the lowest point reached in this country since I have been here, in the values of real estate. 1893 was considered about one-half crop year, and 1894 a total failure, and 1895 a good crop. 1895-6-7 were considered good years, but prices were low. The values of real estate and other property in 1899 were considerably higher than in 1894-5. Probably 20 to 40 per cent increase in value in 1899 over 1894. Mr. Beddeo did the bidding on the bank building we bought, at my solicitation. I did not suppose any other

bid would be made and I told him to bid $2500 what we were compelled to start it with, and I nodded for him to raise it, which he did. Testim Edg

11 *Rebuttal.*

I should think the value of real estate in Orleans really greater in 1899 than in 1894, although it might not have been. As to crops, 1898 was considered fair year. 1899 was considered partial crop failure. We raised lots of corn each year.

Price of farm products were lowest in 1896 it ever was here. In 1894 corn was worth about 60 or 70c, due to scarcity of corn.

CHARLES M. HOGG, sworn on behalf of respondent: Testim Char Hogg

My name is Charles M Hogg, my residence Cadiz, Harrison
2 County, Ohio. I have resided at Cadiz forty years.

I am brother-in-law to the respondent Charles P Dewey. I am a buyer of wool and a farmer, largely. I have some connection with the banking business also down where I live. I was the owner of 20 shares of stock—two thousand dollars—in the First National Bank of Orleans, Nebraska. I think I purchased this stock in 1891. I suppose I held the stock as owner something like three years, possibly a little more. I sold that stock to C P Dewey sometime in February or January 1895. Before that time I assigned the stock to Fred Jewett—F L Jewett.
3 That assignment was not a sale of the stock. The transfer of the stock, when I sold it to Charles P. Dewey, was made by Mr Jewett. I think I received par for the stock from Charles P Dewey. There was another deal involved in the sale of this stock at the same time, another transaction, Mr Dewey was owing me, as I supposed, $2250. I paid $4500 for the $5000 and it was on the basis of $4500 at which we valued some ice plant stock that I had taken from him. We got to talking about the stock and he said that he was making certain sales and
4 trades of it, and asked me what I would take for it, and I told him. The amount of the ice stock was $2250 and of the bank stock $2000. He gave me $3400 in money and a lot that I regard as worth $750. The lot is in Cadiz Ohio. This made $4150. The par value of the ice stock and the bank stock would amount to $4500, but there was considerable doubt as to the

validity of my claim against C. P. Dewey for this ice stock. He had written a certain guarantee upon which the word "option" was put in that made that claim very doubtful, so much so that I lost a claim against his brother for the same amount, on the same contract exactly, that they both wrote and signed. I brought a suit, and my attorney advised me to withdraw it; he says "I can't win it," and Albert Dewey has never paid me. That was the condition of affairs. I received $200 for the $2000 of stock in the First National Bank of Orleans. I had every reason to suppose when I owned this stock in the First National
5 Bank that it was solvent, from letters that I had received from the cashier a few months previous to the sale.—Witness hands letter to Mr Harvey—I received that letter, which is dated November 20th, 1894, in November, 1894. It bears the signature of J A Randall, and to the best of my knowledge it is his writing.
6 John A Randall was sachier at that time. I showed this letter to C. P. Dewey a short time after I received it. He read it.

Respondent offers letter in evidence, being Exhibit A.

Orleans Neb. Nov 20″ 1894.

C M Hogg Esqr.
Marion Kans.

Dear Sir:—Replying to yours of the 16″ I enclose on separate sheets the list of stockholders and amount of stock held by each, and also, a list of C/D's held by parties in Ohio.

As to the notes, under the present conditions and arrangements I would have to report all good, for I think there was security turned over to C P Dewey sufficient to make everything
7 good. Of course this is held by him individually and not as trustee, but I think it will not matter, for I am sure he will handle the property placed in his name as will best protect the banks interests. It will take some time to realize on this security, owing to the failure of crops here this year. Had this been a good year I feel that a large amount of this land would have been sold and many of the notes that on their face seem bad, would have been taken up.

Business of all kinds is a stand still here. I doubt if there was corn enough raised in this county for seed next Spring. No small grain at all. With this condition of affairs it would be folly to expect any business. There is not half feed enough to keep the stock through. Farmers have no money and nothing with which to get any. All we can do is to get along the best we can and keep things in as good shape as possible. I have no

fears of any losses, but the larger proportion of our paper will have to be carried over. In a business experience of over twenty
8 years I have never seen anything that would compare with this. I am sorry that I can't give you a more flattering report, but I can't do so this time. However, we are going to live through it all right.

Yours Very Truly,
J A Randall.

I have the list of stockholders and the amount of stock held by each, which is referred to in Mr. Randall's letter. I have a
9 list of the holders of certificates of deposit in that bank described in the letter.

The lists were enclosed in that letter.

Witness identifies lists above referred to, which are offered in evidence marked exhibits "B" and "C".

List of Stockholders.

Geo W Burton	100 shares
M F Burton	100 shares
Jno A Randall	10 "
A H Burton	10 "
11 Pat Gibbons	10 "
J O Hoffman	10 "
C P Dewey	10 "
A B Dewey	10 "
C M Hogg	20 "
J & C Galbraith	15 "
Chas McKinney	5 "
F L Jewett	95 "
A H Shufelt	105 "
	500
Mrs Nancy Dewey	371
Mrs Rose Forney	200
Chas McKinney	1000
John Martin	1060
12 Dora L McKinney	725.40
J D Mills	434.60
Carolina Galbraith	1000
	4791.00

Certificates held by Ohio parties.

Certificate number 60 for twenty shares of stock, issued to Charles M Hogg, of date December 4, 1891, is the certificate referred to in my testimony. My signature, is attached to the certificate, endorsed on the back. The date of transfer is December 20, 1894. That is the date I transferred and assigned it to F L Jewett. Answering the question "What time was it in 1895 that the stock was transferred from F L Jewett to Mr Dewey" would say, at the time these trades were being made, of this stock, when it was being disposed of; understand that I transferred that to Fred Jewett as a matter of convenience, so that Mr Dewey, if he made any sale of this stock he could have transfer made; his idea was that he was going to sell this for me, and he said "I am making some good trades and may have to advance the money," and I gave him carte blanche to do as he pleased, and I transferred this stock to Fred Jewet so that if it appeared good, Jewett could transfer it. Afterwards Mr Dewey and I came to a trade of this stock. These are the facts about it exactly. I suppose I was a stock holder in the bank until I sold it to Mr Dewey. I am connected with the Farmers and Mechanics National Bank of Cadiz Ohio. I was a director in that bank but not at that time. My connection with that bank at that time was director. I was a director in the First National Bank of Orleans for one or two years. I dont think was elected a director in 1894. I was elected a director in that bank, but never qualified. I refused to be qualified after I was elected one time. It may have been previous to 1894—that is my judgment. No body knew of this transfer to Jewett but Mr Dewey, I presume, I didnt notify the cashier of that bank. The stock was only in Mr Jewett's name about three months.

I gave Mr Dewey a receipt in full in settlement of the controversy that existed between us. I think the receipt would set out the settlement. I got the money, on my side, $3400 in money and a lot that I shouldnt want to take $750 for today. About the ice company stock, I got $5,000 of that stock, bought it at $4500, with the understanding, unfortunately, at my option, that they were to pay me 6 per cent upon $4500 in addition to the principal $4500 that the stock cost me, at any time I should demand it, six per cent per annum. I don't recollect exactly how long it was to run, two, or perhaps three years. I would like to add that the word "option" spoiled my case. I brought a suit, commenced at Chicago, against A B Dewey, but my attorney advised me to withdraw that suit. He says "I can't win it in the State of Illinois." That was in the State Court. A. B

Dewey never paid his part. Mr Jewett is C P Dewey's step-son.

19 Counsel for respondent promises to have C P Dewey produce the receipt referred to above, by witness, and file the same with this deposition, if it can be found.

Mrs Nancy Dewey's money in the bank was paid. Also Mrs Rose Forney's; Charles McKinney's I dont know about, nor
20 John Martin's nor Dora L McKinney's. Dora McKinney is dead. They live at Smithfield, Jefferson County, Ohio, and the Galbraith Brothers also. J D Mills present address would be Cadiz Ohio; I dont know whether he got his money out of the bank. Caroline Galbraith lives at Smithfield, Ohio, Jefferson County. . . . . .

At the time I examined the list of stock holders furnished by Mr Randall, I did not know that all the property of Geo W Burton and M F Burton had been transferred to C P Dewey. I knew that a certain farm mentioned there had been transferred,
21 but nothing beyond that. . . . . .

A H Shufelt who held 105 shares of stock was a brother-in-law of Albert Dewey.

Q Didnt it occur to you when you received that list of stockholders and looked it over and found that the Deweys had sold all their stock except ten shares, and that the stock was in the hands of a lot of insolvent persons, individually not responsible, that the solvency of the bank so far as its stockholders were concerned, was in a rather critical condition? A It did not occur to me in that light.

Q I will ask you if it is not true that February 2, 1895, you sent this letter (showing witness letter) A Yes sir

Q I call your attention to a letter of March 17, 1894, and ask you if you sent that letter. A Yes sir.

22 *Re-direct Examination.*

I did not care to be a director of the First National Bank of Orleans because I did not care to be a director in a national bank, that I had nothing to do with the management of, and assume responsibility as a director. That would be true of any bank.

John 24 JOHN A. RANDALL, sworn on behalf of respondents:

My name is John A Randall. I testified on behalf of complainant in this case. I was formerly cashier of the First National Bank of Orleans. I have made an examination of the books of the First National Bank of Orleans for the purpose of ascertaining the names of depositors with that bank in December 1894, and also the names of depositors in May 1897, I ascertained the amounts deposited by these several depositors respectively. I ascertained the names of those who held certificates of deposit in December 1894, and also those who had open deposits subject to check in Dec. 1894, and a list of certificates of deposit issued by said bank in 1897, at the time the bank failed,
25 and the names of the depositors who had open deposits subject to check in June 1897, at the time the bank failed.

Q I hand you a paper and request you to state what it is? A This is a list of the deposits of the First National Bank of Orleans December 31, 1894; deposits subject to check. This list was prepared by me from the daily trial balance.

Said list offered in evidence as exhibit ..... See record, pg.

Q I hand you another paper. Please state what it is. A This is a list of parties holding certificates of deposit in that
26 bank December, 1894. December 31; I think it was on that day, 1894. I got these names from the certificate of deposit register, just by leafing through it, of the First National Bank of Orleans.

Said list offered in evidence as Exhibit ..... See record, pg. ....

Q Mr. Randall, I hand you another paper; please state what it is. A This is a list of the parties having deposits in the
27 First National Bank of Orleans, subject to check, on May 24th 1897, at the time the bank failed. This is copied from the daily trial balance of that bank.

Said list offered in evidence, and attached to record, marked Exhibit ....

Mr. Randall, I hand you a paper marked Exhibit G. Please state what it is? A This is a list of the holders of certificates of deposit in the First National Bank of Orleans in May, 1897, at the time the bank closed. This I got by running over the
28 certificate of deposit register and copying all of those that were not marked paid.

Said list offered in evidence, attached to record, marked, Exhibit ....

. . . . . .

Cross-Examination.

29 I went out of the Bank July 1, 1895.
I knew nothing personally about the correctness of the books after that date.

FREDERICK L. JEWETT, sworn on behalf of defendants:

1 My name is Frederick L. Jewett, my occupation is assistant to the General Manager of the Consumers Company; residence, Chicago, Ill.

In 1893-4 there was some stock of the First National Bank
2 of Orleans Nebraska that Mr C. P. Dewey had placed in my name to facilitate trades. At that time Mr Dewey was away from Chicago most of the time. Part of his business was the buying and selling of real estate to a very large extent. Besides this bank stock transaction, Mr Dewey would purchase real estate
3 in my name, that is to say would have the contract and deeds and so drawn in my name, and conveyed to me. The purpose of that was that Mr. Dewey believed that he could make better deals by purchasing them in my name than by making the same deals in his own name. Subsequently I would transfer it to Mr. C. P. Dewey. The first conveyance of this bank stock was made February of 1893. There were 95 shares. I transferred them in September of 1893 to Mr Dewey, Mr C. P. Dewey. The next transaction relative to that stock was in May of 1894 when Mr. Dewey transferred 95 shares of stock to me. I paid nothing for it. The next transaction was in December of 1894 when the certificate for 95 shares was sent back to the First National Bank of Orleans and reissued, to me. It was reissued to me in nine different certificates, amounting to 95 shares. That was simply to get the stock—to get the certificates into a smaller number of shares so that in trading it could be better handled. The next transaction was in December of 1894 when Mr C. P. Dewey transferred to me ten shares more, making a total of 105
4 shares. That was in Dec. 1894, the 31st. December 10th 35 shares of that stock was transferred ti L. Eberhart and R. Dubbs and A. C. Kendig, in the purchase of some property at Chicago Lawn. The purchase was made in my name. The total con-
5 sideration of that purchase was $12,000, I think. The paper marked "Ex. F. L. J. I" offered in evidence by defendants, was

F. L. the contract of that sale. The contract was carried out. The papers marked "Exhibits F. L. J. 2, 3, and 4", which were offered in evidence by defendants, are the deeds for the property in question, under the contract which has already been introduced. The paper marked "Ex. F. L. J. 5" is the deed of the property that is in question, from myself to Mr C P Dewey. That is the 6 property mentioned in the contract and contained in the three former deeds, marked "Exhibits 2, 3, and 4." The next transaction was in December of 1894 when I purchased from Jules W. Jouvenat some property at Seipp avenue and 72nd Street. The total consideration of that purchase was $11,000. The purchase was made by a transfer of 20 shares of stock in the First National Bank of Orleans and the balance in cash. The paper marked "Ex. F. L. J. 6" offered in evidence by defendants, is a real estate contract for this transaction of $11,000. There was a transfer in this deal of some property in Nebraska for this property at 72nd and Seipp avenue. There was 20 shares of 7 the stock of the First National Bank of Orleans Nebraska and a certain amount of realestate in Dundy County Nebraska valued at $3500. The balance was paid in cash or by assuming a mort- 8 gage, and I have forgotten which. There was no variation from the contract here.

The paper marked "Ex. F. L. J. 7" offered in evidence by defendants, is a deed to me of the property at 72nd and Seipp avenue, under the contract I have just spoken of. The paper marked "Ex. F. L. J. 8" is my deed for this same property that is in question here, in the last contract from myself to Charles P. Dewey.

9 The next transaction was in December 1894, when I transferred to Messrs Dubbs and Kendig 30 shares of the stock of the First National Bank of Orleans for some property at Chicago Lawn. The papers marked "Ex. F. L. J. 9" and "Ex. F. L. J. 10" are the deeds of the property last in question to me. I think the amount of that transaction was $9,000.

10 The paper marked "Ex. F. L. J. 11" is the deed of the property last in question from myself to Mr Charles P. Dewey. The next transaction was the transfer of some 30 shares of stock in the First National Bank of Orleans for some property in the Longwood Subdivision in the Ashland Subdivision in the South Side of Chicago. 20 shares of this was of the shares that had been transferred to me from C. P. Dewey. The other ten shares was some stock that was owned by Mr. C. M. Hogg. There was $8250 I think involved in that transaction.

The paper marked "Ex. F. L. J. 12" is the contract of the deal last in question.

That 30 shares was made over to Charles H. Killough. The papers referred to as "Ex. F. L. J. 13", "Ex. F. L. J. 14", and "Ex. F. L. J. 15", which were offered in evidence by solicitor for defendants copies of which are attached to the record, are
11 deeds conveying the property last in question to me. The papers marked "Ex. F. L. J. 16", and "Ex. F. L. J. 17", are deeds conveying the property from myself to Charles P. Dewey the property last in question.

With the exception of the 10 shares of stock which belonged to Mr Hogg in the last transaction, the balance of all this stock that I have testified of was stock that belonged to Mr C. P. Dewey that was in my name. It had been transferred to him
12 by me. In these various transactions I believe all of it was at par. The parties with whom I dealt didn't know that C P Dewey had anything to do with it I believe. Mr. Dewey had talked with me about this stock and as I remember it he considered the stock worth at least par. I had no information that caused me to believe that it was worth less than par.

Cross-Examination.

13 I am C. P. Dewey's step-son, and was so at the time this stock was placed in my name. At that time I was Secretary of the Consumers Power Ice Company. Mr. Dewey was the treasurer of the same company. . . . . I suppose, as I have previously stated, that the stock was put in my hands, in my name, that in case any deal came up by which anyone wanted to acquire this stock during his absence I could transfer it, as I
15 was here on the ground. That stock was in Mr Dewey's vaults and I saw it and knew it was there. At the time it was first transferred to me, I didn't take possession of the stock. I did not send back these shares of stock to the bank and ask to have them transferred to me. I think it was done by Mr Dewey. I never had any communication at any time with the First National Bank relative to this stock. All the transfers and the correspondence relative to the transfer was done by Mr. C. P.
16 Dewey. These sales of stock to different persons were conducted in Mr Dewey's office. Not by me personally. I don't remember whether I saw Mr Dewey make the transfer or not, when these shares of stock were transferred to me by him the second time. The date of the second transfer was May 1894. I dont

F. L.. remember whether I knew prior to that that this stock had ever been transferred to me. I dont remember of a conversation with Mr Dewey at the time he transferred this stock in May '94. I remember at one time that we had talked about the stock that he had said that a certain number of shares was in my name or
18 something of that kind. In the first transfer of 35 shares of stock, the consideration was $12,000. That stock itself was put in at par, nominally $3500. I dont remember how the balance of the $12,000 was made up. Mr C. T. Killen I think personally conducted the deal. Mr Killen represents Mr Dewey in Chicago. He is his secretary or chief book-keeper. He has charge of his business.

Q. I call your attention to "Exhibit 1" which purports to be a contract from Eberhart, Dubbs and Kendig with Fred J. Jewett and ask you in whose handwriting that contract is? A I believe it is in the handwriting of C. T. Killen.

19 I dont remember how we got at the sum of $12,000 named in that contract. I did not examine the property that is described in this contract for the purpose of making this trade. That is my signature attached to that contract. I personally did not conduct any of these deals or trades but all of them were conducted and all the negotiations were carried on either by Mr Dewey or Mr Killen his secretary under his advice. . . .

22 I am testifying partly from memorandums taken from Mr Dewey's books and partly from my memory. I remember the transactions in a measure, that certain transactions were made, but the details I dont remember.

In the next transaction, the sale of property at Seipp avenue
23 and 72nd street by Mr Jules W Jouvenat, I did not personally conduct this deal with Jouvenat. I have no memory of that trade or sale. My testimony relative to this is made up of memorandum which I took from Mr Dewey's books. I remember that that deal was made; I know where the property is, and that is all. The stock was transferred by me to Jouvenat in December 1894. I dont remember whether Mr Dewey was here at that time. . . . I dont remember the value of the real estate in Dundy County that was transferred at that time. I dont believe I ever knew its value. I dont remember how much was paid in cash.

Q Who paid that? A Mr Dewey I suppose

Q Have you any memory about it? A No sir.

24 Q Or was there a balance paid to Dewey? A It may have been paid to Dewey, I dont remember it.

Q You really know nothing about the valuation or the consideration of the trade except what you get from the contracts themselves and from the memorandum which you hold in your hand? A Yes sir.

I dont remember whether there was any incumbrance on that property or any unpaid taxes.

The next trade was in December 1894 when 30 shares of stock—when the property at Chicago Lawn was transferred to me by Messrs. Dubbs and Kendig. I believe they are the same Dubbs and Kendig that participated in the first trade. As I remember it this is a piece adjoining the piece that was first purchased. . . . . .

Exhibit 6, purporting to be a deed from Charles Jouvenat to F. L. Jewett, is in the handwriting of Charles P. Killen, I think.

In Defendants' exhibits 5 and 7, I dont know the handwriting. Exhibits 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 are as follows: No 8 I believe to be the handwriting of a clerk that was at that time in Mr. Dewey's employ; No. 9 I dont recognize the handwriting; No. 10 the same; No. 11 I believe to be the handwriting of the Clerk of Mr Dewey's; No. 12 is the handwriting of Mr. C. T. Killen, or Charles T. Killen; No. 13 is in the handwriting of the clerk that was at that time in the employ of C. P. Dewey; the same for No. 14; No. 15 is written in typewriter; No. 16 is in the handwriting I believe of the clerk that was in Mr Dewey's office at that time; No. 17 the same as 16.

I remember that stock was put in my name by Mr Hogg in January of 1895. I cant remember when it was put in my hands. In January 1895 there was 10 shares of stock that belonged to Mr. Hogg transferred to Mr. C. H. Killough. This ten shares was put into my hand, to be put in with this transaction that Mr Dewey had with Mr Killough. I think I remember of signing some of those shares of stock at the time they were transferred.

Q If any stock was delivered to any of these parties it was done by Mr Dewey or by his representative Mr Killen and not by you? A. I believe that might be the case, yes sir. I signed the certificates.

Q I call your attention to what purports to be 95 shares of stock in the First National Bank of Orleans issued to F. L. Jewett, and ask you if you remember ever seeing those 95 shares of stock? A Yes sir. I endorsed it on the back. I saw it before I endorsed it; how long before I cant say. As to the hand-

of F. L.

writing in the power of attorney on the back, I think that is Killen's.

29 Q I call your attention to ten shares of stock purporting to be issued to C. P. Dewey and ask if you have any memory of seeing that stock before this? A I believe I have seen it, but cant testify to that exact certificate. It is dated February 6th 1893, number 85. I know nothing of a man named Hatcher. I dont
30 remember who Charles H. Killough is. . . .

Re-direct Examination.

None of these parties with whom these contracts are made, these sales that I have been testifying about, are to my knowledge
31 in any way connected with C. P. Dewey, or related to him in any way.

DEFENDANTS' TESTIMONY.

of P.

CHARLES P. DEWEY, being duly sworn, testified as follows:

My name is Charles P Dewey, my residence Chicago Illinois. I am the Charles P Dewey who is named as defendant in this action, and who was a member of the former firm of C P & A B
2 Dewey, which firm dissolved May 1st, 1891. Prior to the dissolution of the firm of C P & A B Dewey, Burton & Harvey, of Orleans, Nebraska, loaned considerable money for C P & A B Dewey.

I first became interested as a stockholder in the First National Bank of Orleans, Nebraska, I think in December, 1891, about which time I did acquire stock in that bank. I then acquired 120 shares of the stock, for which par value in cash was paid. There was an indebtedness of Burton & Harvey for part of it, which was paid by that stock. Negotiations had been going on for the purchase of the stock in the Fall of 1891, and in December of that year they were closed. At that time there were 120 shares purchased by myself, 120 shares by A B Dewey and 20 shares by C M Hogg, making 260 shares all together. At that time Burton & Harvey were owing the old firm of C P & A B Dewey about $2600, an actual amount of $2625.97, and
3 it was the understanding that that was to be paid out of the proceeds of the stock. Then there was paid for the account of

Burton & Harvey a note of theirs, given to the First National Bank of What Cheer, Iowa, $5,000, which we paid and took up the note and sent to Burton & Harvey. We paid for that in cash, draft for the cash, New York draft; then we paid for Burton & Harvey to the Chemical National Bank of New York their note for $2500, which was paid to that Bank in cash; we paid to the Georgetown National Bank of Massachusetts $2552.77 in cash; to the Peoples Trust Company of Farmington, Maine, $1561.27, cash; to R H Porter of Keene, New Hampshire, $1500; We paid various items of express charges, on one package to Keene, New Hampshire, 25 cents; package from Farmington Maine, 30 cents; package to Orleans, Nebraska, 30 cents. Then we remitted to Burton & Harvey a draft for $10,268.63 The total of all those payments was $26,009.49. Now there is a credit of draft to E T Baldwin or from E T Baldwin, $8.25, and T J Gallup $1.24, making $9.49, which deducted from $26,009.49 would leave $26,000 of cash that we advanced and furnished at that time, and paid. This is cash, and that debt they were owing C P & A B Dewey. That was for cash or cash collected. It was a cash collection, so if they were owing us and we deducted from something we were paying them, we were paying them. It was $26,000 cash. Mr. C M Hogg, of Kansas, Ohio, furnished $2,000, for which a certificate of stock of the First National Bank of Orleans, Nebraska, was furnished him for 20 shares; that was $100 a share. A P Dewey furnished $12,000 for which certificates of stock of the First National Bank of Orleans was sent to him for 120 shares. I furnished $12,000 cash, for which certificates for 120 shares of the First National Bank of Orleans were sent to me. That 120 shares of stock was transferred to my name. I filed it with my other securities. On March 8th, 1892, I sold to J and C Galbraith 10 shares of stock of the First National Bank of Orleans for $1080 cash, and sent my certificate No. 55 for 30 shares to the First National Bank of Orleans, and got them to issue a new certificate for ten shares to Balbraiths and 20 shares to myself, which was indicated by No. 70. On April 23d, 1892, I sold 5 shares to Charles McKenna, of Smithfield, Jefferson County, Ohio, $550, cash, and sent my certificate to the bank for 20 shares, and requested them to make out two certificates, one for 5 shares in the name of Charles McKenna, and the other for 15 shares in my own name. That left me retaining 105 shares. The numbers of the certificates and shares making up that 105 shares, were: Certificate No. 52 for 50 shares; certificate No.

P. 62 for 40 shares; certificate No. 76 for 15 shares, making 105 shares.

The next transaction I made with that stock was on February 8th, 1893, I sent my certificates of stock in the First National Bank of Orleans, Nebraska, to that bank and had new certificates issued as follows: No. 84 for 95 shares, in the name of
6 F L Jewett, and No. 85 for 10 shares in my own name. That was not a sale to F L Jewett; it was simply put in his hands for convenience of transacting the business. Real estate in Chicago was beginning to sell at a much lower price than it had for a long time, and I conceived the idea that it might be a good thing to buy Chicago real estate. I was away from home a good deal and put this stock in Mr Jewett's name in order to use in making purchases of real estate. Mr Jewett was not connected with me in any manner as a clerk or otherwise; he was a stepson.

The next transaction in regard to this stock was along toward the Fall of the year 1893; real estate rather recovered in price, and I did not see any opportunity to make any purchase, and I
7 decided to have Mr Jewett return the stock to me, which he did, and it was sent to the First National Bank of Orleans, Nebraska, on September 5th, 1893 with the request that the officers of the Bank send me a new certificate, which they did, for No. 87 in my name in lieu of the one I sent them in Mr. Jewett's name for 95 shares, No. 84. On September [illegible]th, 1893, I returned certificate No. 84, which stood in the name of F L Jewett, and had a new certificate issued to myself for the 95 shares, and it was reissued as No. 87.

The next transaction in regard to this stock was during the Winter of 1893 and the Spring of 1894; real estate became very
8 much depressed in price in Chicago and everywhere else, and it looked to me as if it was then the time to purchase, and I returned my certificate No. 87 of the First National Bank of Orleans, Nebraska, calling for 95 shares, and had the Bank send a new certificate in the name of F L Jewett for 95 shares. That certificate was issued to him. There were a number of certificates. It was certificate No. 95. It was dated May 4th, 1894. That was not a purchase by Mr Jewett, it was simply put in his hands for convenience. The ownership of that stock was in myself.

The next transaction I had with reference to any of those certificates was on December 11th, 1894, I sent certificate No.
9 95 for 95 shares in the name of F L Jewett, to the First Na-

tional Bank of Orleans, Nebraska, and requested them to send me new certificates, which they did as follows, namely: One No. 96 for 5 shares; one No. 97 for 5 shares; one No. 98 for 5 shares; one No. 99 for 10 shares; one No. 100 for 10 shares; one No. 101 for 10 shares; one No. 102 for 10 shares; one No. 103 for 20 shares; one No. 104 for 20 shares; all in the name of F L Jewett, making a total of 95 shares.

The next transaction in regard to this stock was on December 10, 1894, Mr Jewett made a purchase of real estate from L Eberhardt, R Dubbs and Albert C Kendig. The consideration was $12,000. That was paid by conveyance of a quarter section of land in Rollin, Neosho County, Kansas, $1500, and encumbrance assumed on the property $5,000, and bank stock, of the First National Bank of Orleans, Nebraska, for 35 shares $3500, also cash $2,000. That 35 shares of stock was 35 shares of the 95 shares in the name of Fred L Jewett.

The next transaction was on December 14th, 1894, Mr Jewett made a purchase from Jules W Jouvenat, of real estate. It was lots 1, 2, 3 and 4 in J O Bryant's subdivision of Lots 5 and 8 in Conrad Seipp's subdivision of the West half of the Northwest quarter of section 25, town 38, range 14, Cook County, Illinois. The consideration was $11,000, and it was paid for by 20 shares of stock of the First National Bank of Orleans, Nebraska, at $2,000, and it was part of the 95 shares of stock held in the name of F L Jewett. There was a Master's certificate for $5500 on this land. That was taken up and paid for in cash. There were two quarter sections of land in Dundee, Nebraska, turned in at $3500, making $11,000, that was paid for the property.

The description of the Dundy County land is the Northeast quarter of section 25, town 2, range 39, and the Southeast quarter of section 8, town 3, range 38, Dundy County, Nebraska.

The next transaction was on December 29th, 1894, Mr Jewett made a purchase from R Dubbs and A C Kendig of lots 1 to 12 and lots 19 to 25 inclusive, and lots 29 to 34 inclusive, and lots 41 to 46 inclusive, in block 3 in Eberhardt, Robinson and Good's subdivision of the East half of the Southwest quarter of the Northeast quarter of section 14, township 38, range 13, in Cook County Illinois, in the suburb of Chicago Lawn. It is all Chicago property. The consideration for these lots was $9,000. It was paid for in stock of the First National Bank of Orleans, Nebraska, for 30 shares, at the price of $3,000, and there was an encumbrance assumed of $4,000, and there was paid in cash

. P. $2,000, making $9,000. This stock was part of the 95 shares held by F L Jewett.

The next transaction was on December 31, 1894, I sent certificate No. 85 for 10 shares of the stock standing in my name, of the First National Bank of Orleans, Nebraska, and requested them to re-issue a new certificate in lieu of same, to F L Jewett, as follows: Certificate No. 109 for 5 shares and No. 110 for 5 shares, which were issued and returned to me in the name of F L Jewett.

The next transaction in regard to the stock was on January 10, 1895, when Mr Jewett purchased from Charles H Killough lot 85 in Longwood's subdivision in the Southeast quarter of section 6, township 37, range 14, and also lots 23 and 24 in block 10 Ashland subdivision of the North three quarters of the east half of the Northeast quarter of section 18, township 38, range 14, all in Cook County, Illinois, for a consideration of $8,250,
12 and he paid in bank stock 30 shares of the First National Bank of Orleans, Nebraska, $3,000; he assumed an encumbrance of $1500 and he paid in cash $3750, making $8,250. That 30 shares of stock was made up of 10 shares belonging to C M Hogg and 20 shares in F L Jewett's name. I have stated that F L Jewett paid these different things; I furnished the cash, the land and everything. That disposed of all my stock, held either by myself or Mr Jewett.

The next transaction was on January 9, 1895, Mr Jewett purchased from Emil Jouvenat, for $1900, lots 43, 44 and 45 in Block 1 in Richard S Cox Jr's subdivision of ten acres in the Southeast quarter of the Southwest quarter of section 17, township 38, range 14, Cook County, Illinois, and in payment he gave 10 shares of stock of the First National Bank of Orleans, Nebraska, $1,000, and he assumed an encumbrance or paid same, of $900 cash. That was 11 shares of stock belonging to C M Hogg. Just about that same time I did purchase other real estate. On December 28th, 1894, I purchased from J W Chisholm Block 14 Jones' subdivision of the East half of section 29, township 28, range 14, Cook County, Illinois, consideration $12,600. There was no bank stock in this transaction at all.

On December 1, 1894, Burton & Harvey owed me $9,085.31. This was for advances made to them to pay indebtedness of
13 theirs to not only the First National Bank of Orleans, Nebraska, but to other banks, such as the Capital National Bank of Lincoln, Nebraska, and McShane & Condon of Omaha, for indebted-

ness that Burton & Harvey were owing, as well as the First National Bank of Orleans was owing. Testimony Dewey

During the Fall of 1893 I made a number of loans to the First National Bank of Orleans, Nebraska, as follows: On August 7th, 1893, I loaned them $5,000; that was a personal loan entirely, and they issued their bank certificate of deposit for $5,000, which they took up and paid on December 9, 1893. On September 5, 1893, I loaned them $3,000, and they issued their certificate of deposit No. 14,491 for $1,000, which was paid November 17, 1893. They issued certificate 14,492 for $1,000, which was paid December 4, 1893. The third one was certificate No. 14,493 for $1,000, which they paid March 30, 1894. All of these were dated September 5, 1893. They issued three certificates for $1,000 each. On December 7, 1893, I loaned them an advance of $5,000, payable on demand. That was loaned to the First National Bank of Orleans. They issued five certificates of $1000 each, numbered as follows: 14,548, 14,549, 14,550, 14,551, 14,552. The first of these certificates of $1000 was paid April 16, 1894; the second was paid September 3, 1894; the third was paid September 3, 1894. Certificates Nos. 14,551 and 14,552 for $1000, still remain unpaid.

The fore part of 1893, and prior thereto, my relations with A B Dewey were friendly enough in a business way, and we transacted business together as usual; but during the Summer of 1893 our relations became very much strained, when we ceased to do business together, or rather we were not on speaking terms. I think it was during the latter part of the Summer of 1893 that I ceased to have personal consultations with him. I do not think I had any consultations with him as to the First National Bank of Orleans, or any of our business connections subsequent to the 1st of August, 1893. I did not after August, 1893.

I did not receive any information concerning the solvency or otherwise of the First National Bank of Orleans from my brother A B Dewey, either directly or indirectly, either after or before.

This paper which you hand me is an agreement between C P Dewey and A B Dewey and Burton & Harvey and George W Burton and John A Randall, cashied for the First National Bank of Orleans, Nebraska. The signature of Burton & Harvey was written by George W Burton, and that of George W
6 Burton was written by George W Burton; John A Randall, Cashier, is written by John A Randall, Cashier of the First

of C. P. National Bank of Orleans. I know their signatures. No proceeds came to my hands from that agreement, I never received a dollar, in any way, shape or form, from those collections. As to this indebtedness of Burton & Harvey of $9085.31, due as of December 1, 1894, not a dollar of it has ever been paid. That indebtedness was to me individually. That indebtedness includes what cash I paid out in taking up the notes referred to in this agreement.

I did not learn that there was any question of the solvency of the First National Bank of Orleans, Nebraska, until the bank closed its doors in 1897. Outside of these various securities named in this agreement, marked Exhibit A, of the
18 $2000 certificates of deposit which still remained unpaid, I had nothing to do with the First National Bank of Orleans subsequent to January 10, 1895, the date of the last transfer of my stock.

At the time I was in negotiation for purchase of this stock of the First National Bank, there was a personal investigation made as to the bank, a representative sent there and investigation made at the time. We were and had been personally acquainted with Burton & Harvey for a number of years, and had the utmost confidence in the two gentlemen, and statements
19 coming from them had a good deal of weight with us. They personally agreed to assume and guarantee payment of all bills receivable in the bank at the time, and we considered their guaranty entirely good back of their statement made at the time. I made other examinations of the affairs of the bank; from frequent statements, and we attended their annual meetings for several years after we bought the stock, and always found them in flourishing condition. We investigated their bills receivable from time to time, and at those meetings they seemed all right. As to what knowledge I had of the bank's having an indebtedness which it would be unable to pay, I never knew of the insolvency of the bank prior to the closing of its doors in 1897. In these examinations that we made of the papers, Mr A B Dewey made a paersonal examination, before the stock was purchased. I had no knowledge that any of the notes for large amounts held by the First National Bank of Orleans, was paid in 1895, and in fact George W Barton always told me that all of the notes of the Bank were good.

This paper which you now hand me is a full list and description of the bills receivable and security due the First National Bank of Orleans, Nebraska, at the time that A B Dewey, C M

Hogg and myself bought the stock of the bank from Burton & Harvey. This was made prior to the purchase of the stock, and is dated October 14th, 1891. Before we bought the stock it was upon representations made in this agreement and guaranty. This is an itemized statement of the condition of the paper, bills receivable due the bank. I had other information in regard to this from a contract that was subsequently made. I never had any information as to the character of these bills receivable, I never was informed that they were bad, but on the contrary I did have every assurance that they were still good. (Ex. B)

I also received at about that same period, the list accompanying the bills receivable, which goes on to describe them, and also the prior dividends of the bank up to that time, and also agrees to guarantee all of these bills receivable owing to the bank. (Ex. C) This paper which you now hand me was delivered about the same time, maybe a little after, but prior to the purchase of the stock of the First National Bank of Orleans from Burton & Harvey. (Ex. D)

This paper which I now hold is an additional paper given me at the time, having attached a sworn statement of the officers of the First National Bank of Orleans, Nebraska. (Ex. E)

We had transferred to us, as security for money due to myself and A B Dewey, certain real estate. The result of that was, I received five lots in Los Angeles, which were worth about $1000 or $1100 all together. I received a piece of land which is a sort of a sand bank, near Orleans, Nebraska, that I will probably realize a thousand dollars out of. That was applied on advances made to Burton & Harvey on book account, to pay taxes and interest at various times, which it would not cover, and it left that amount which has been spoken of as due with practically nothing,—nothing in fact, on it.

Prior to 1896 I did not receive any information as to the character of these various bills receivable, or any other bills receivable which the bank held, other than I received by these papers which have been introduced, except what John A Randall and George W Burton, the president, told me, and they assured me at all times they were good. I did not receive any information from any source tending to show that any of these matters were bad. At those annual meetings I did not examine the securities themselves. I made an examination only in a general way, I asked questions of the cashier, the president and the assistant cashier.

of C. P. In the sales of this stock there was no guarantee made by which I guaranteed or was in any way connected with the stock after it was transferred. The statements, copies of the statements that I received from the officers of the bank. Copies of the sworn statements, I mean, and the published statements of the bank as sworn to by the officers of the bank, were furnished the parties from whom Mr Jewett purchased these lands, and they were requested to make their own investigations, if they wanted to, in regard to the stock of the bank. I am informed that several of them made investigation and were fully satisfied with the stock. I have no information only what was
60 told me. I did not personally make any representations, nor did I authorize anyone to make any statements in my behalf.

Cross-Examination by Mr. Lambertson.

The firm of C P and A B Dewey dissolved May 1st, 1891. I mean by that we didn't do any new business. There was some old business yet to be closed up and settled up between the members of the firm. I think that for several years after May 1st, 1891, in dealings with the bank, and also with Burton & Harvey, there were some letters written over the signature of C P & A B Dewey by A B Dewey, and possibly there were a few letters in that way over the signature of C P Dewey. I suppose the firm name was used after the dissolution, by C P and A B Dewey, with the intention of closing out the business of the old firm. We did not office together very long after May 1st, 1891, possibly a few months, not longer than that, most of the time A B Dewey was absent. The relations of C P Dewey and A B Dewey were frequently in a measure only, up to the Summer of 1893. We met and talked together over business affairs some little, but not very much, prior to that time. I was not aware that letters and communications were written to the bank, and to Burton & Harvey, prior to the Summer of 1893, and signed C P & A B Dewey, until the letters were
61 written and forwarded, except such letters as I wrote myself. I don't remember whether as late as September 9, 1893, I wrote letters and signed them C P & A B Dewey.

The signature, C P & A B Dewey, to the following letters, to which you call my attention, is in my hand-writing:—Letter dated September 9th, 1893, addressed to John A Randall, Cashier; letter bearing date September 22, 1893, addressed to George W Burton, President, Orleans, Nebraska; letter writ-

ten to George W Burton President, under date of January 17, 1894; letter dated April 2d, 1894, addressed to G W Burton, President, Orleans, Nebraska; letter dated December 19, 1894; letter dated March 26th, 1894; letter dated March 14th, 1894; letter marked Exhibit 72, in evidence, being a letter dated March 14th, 1894, addressed to John A Randall, Cashier; letter written February 5th, 1894, being Exhibit 73 attached to the deposition of John A Randall, Cashier.

The signature of C P & A B Dewey, to letter dated June 5th, 1894 addressed to John A Randall, Cashier, Orleans, Nebraska, I did not write. I don't know who did. It looks like A B Dewey's.

The first transfer made to F L Jewett bears date February 8, 1893. I never sent a certificate for 95 shares to the bank to be transferred to Mr Jewett. On February 8, 1893, I sent a certificate for 105 shares, issued to F L Jewett, which was shown in certificate 84, and 10 shares in certificate 85 in my own name. I get the memorandum for that date from my copy books, memorandum records. I sent 105 shares at that time, in one certificate. I sent it to the Bank, John A Randall, cashier.

The letter marked Exhibit 60 and attached to the deposition of J A Randall is dated February 4, 1893. This may be the date it was received. I sent the certificate along about that time, February 4, 1893. I do not think I had any conference with A B Dewey before sending that. I don't remember any. We were not on unfriendly terms at that time. I don't know whether he knew that I sent those certificates on at that time. I am under the impression that he might have had some understanding, that we might have talked about buying some real estate; I don't know whether he bought any at all, or whether he transferred his, or anything about it. I don't remember any special talk: at that time we might have had. I do not remember his sending on his stock to be transferred on the same day that I sent mine. There was no understanding between us; it was not agreed and understood that he should send his stock and have it assigned to H H and A H Shufelt, which I would have mibe transferred and assigned to Mr Jewett. I did not know that the same day I sent mine forward to be transferred he sent his to be transferred. I don't know whether he did that or not.

I don't know whether that is A B Dewey's signature to the letter dated February 4, 1893, in which he sends his stock that he owns, and directs its transfers to H H and A H Shufeldt,

C. P. 66 I know his signature; that looks a little like Mr Shufeldt's writing. It does not look altogether like A B Dewry's signature. Mr Shufeldt was a brother-in-law of A B Dewey. He was in the office at that time. He was not a clerk for our firm. He was not a clerk for the firm of C P Dewey & Company, nor C P & A B Dewey. I do not know whether his mother-in-law is A H Shufeldt or not. He has a sister-in-law and it may be her. It is some relative anyway, and I think perhaps it is his sister-in-law. Before I made this transfer and A B Dewey made his transfer I did not consult any at-
67 torney about it. I don't know whether he did or not. I am sure that I did not. I don't think I asked Col. Thompson about it. I did not consult any other attorney about it. As I say, A B Dewey at that time was on speaking terms and acquaintance with me, and we have talked about the very same thing, of purchasing Chicago real estate. We were large dealers in it, and there was no agreement or understanding to transfer stock. I don't know what he did. He had his own books in his own office, and his office was separate and apart from mine. I know nothing about his transactions whatever. I am quite positive that I did not go and consult an attorney in this city. I don't know whether A B Dewey did; he never told me, and I don't know anything about his business. To the best of my recollection I was never told by an attorney that the best thing to do was to get rid of this stock. And my object in transferring that stock was with view of purchasing real estate, which I thought would pay better than the stock. At the time I assigned and transferred this stock it was handed over to Mr Jewett. I think it was left in my office with the view of making these purchases. It was kept in our vault. I don't recollect whether it was kept there after this transfer to Mr Jewett, I wasn't here. I think perhaps I was here at the
68 time the transfer to Mr Jewett was made, I think I was here at the time it was transferred, but I went to Kansas shortly afterwards. I had a talk with Mr Jewett about it. It was well understood. I said to him that I wanted to make some purchases of real estate, and that I thought it was getting down to a price that some purchases could be made with profit, and I was going to transfer to him some of this stock that I wanted to use in payment for real estate. I told him that at the time I transferred the stock in February, 1903. I don't think it is a fact that he did not know that he owned that stock for quite a long time after that. I am not aware of the fact that he has
69 testified that he did not know that he owned that stock in

February, for a long time. He was living at my house, and there may have been some things that I have forgotten about it. Some matters of business that he always permitted me to do, and just at the time I transferred the stock he might not have known about it, but he certainly knew about it beforehand. He was to help me in the transactions, from the fact that I did not care to let these people who had real estate know that I was interested particularly in the stock. It might affect the prices. I did not want these fellows owning real estate to jump up the price on me when they knew it was my stock, and for that reason I put it into Mr Jewett's name. So when I made these purchases of property they did not know it was my stock. I don't know that the persons who traded me their real estate knew that I owned this stock, and I don't think they cared anything about it. There were no misrepresentations made. I don't thing any of them conveyed direct to me, I think it was all conveyed to Mr Jewett. I am speaking now from the best of my recollection. I think it was all conveyed to Mr Jewett. My idea in putting it into Mr Jewett's hands was not to put him in the position of being principal and I the agent for his stock, he was principal clear through. He talked with some of these people himself. I was not there. He and Mr Killen managed it. I was consulted at times, when I was home, and Mr Killen would write me when I was away. I don't know that I have any of these letters of Mr Killen. I don't know where I could put my hands on them. My object in putting this stock in Mr Jewett's name was just simply to get the real estate at fair values. No, I don't think it was to be able to sell my own stock as if it belonged to somebody else. When a man came to me or when I wanted to buy property or when Mr Jewett wanted to buy property, I made no representations as to this stock, at all. Mr Jewett never referred to me. None of these buyers ever came to me and asked me what I thought of the stock. They didn't suppose I had any interest in it, I suppose was the reason. A B Dewey was not my partner. I did not tell him that I had transferred this stock to Mr Jewett. A B Dewey did not tell me that he had his stock transferred at the same time, on the same day, to Shufeldt. It does look a little like a remarkable coincidence. I did not tell Mr Burton anything about this transfer to Mr Jewett being only a nominal transfer. I didn't tell anybody connected with the bank that this sale to Mr Jewett was simply a sham sale. At the time I transferred this stock I was a

C. P. director and was vice-president of the bank. No, I was not a
72 director, either; I was vice-president. I had not been a director. I think A B Dewey was a director I didn't think in good faith I ought to have told A B Dewey that I had not sold my stock as a matter of fact, but was the real owner of it, he 76
being a director, I didn't think it was any of his business when we were not on good terms. I think, if I remember rightly, that I told Mr Burton that I thought it was a good time to buy real estate in Chicago, and I was going to dispose of some of the stock. I think he applied to me about the transfer; I told him frankly about it. I don't remember whether I told him as a matter of fact that Mr Jewett was a mere nominal holder of that stock.

After I had disposed of all my stock and Mr Burton was persistent in using me as the vice-president I did write to the
73 Bank telling them to take my name off the letter paper as vice-president. That after after I had disposed of all my stock; after Mr Jewett had disposed of all his stock. I think the last purchase Mr Jewett made of any property, and the last date he made a transfer of any stock was January 10, 1895. The 77
number of that certificate is 101. It must have been some other number in addition to 101. 101 is for 110 shares. I don't think I have any memory of telling anybody, for instance in February, 1893, that I had transferred this stock to Mr Jewett. I do not recall anything that would lead me to believe that I told Mr Burton, or anybody connected with the
74 bank, that that sale was for my convenience or anything about it. I considered myself the owner of that stock from February, 1893, up to September, 1893. I did not lead anybody to believe anything about it. There was no attempt. I sent the stock and had it assigned and transferred on the books of the bank. My cashier sent that forward. So if any stockholder or any person authorized to examine the list looked on the books of the bank, I suppose Mr Jewett appeared to be the
75 real stockholder. If the bank failed I do not think Mr Jewett would have to pay the assessment instead of me. I never said Mr Jewett was the real owner, only agent. The agency was not anywhere expressed in any transfer or on the books of the bank. I did not think it was necessary. I did not consult any lawyer about it, and no one did for me consult any lawyer relative to it. I did not have any advice from any source on that subject. I don't know as I know at what time I got the deeds referred to in my testimony, from Mr Burton to secure

the payment of the Burton & Harvey indebtedness. It was some time after I advanced them that large sum of money.

I don't remember whether it is true that I got a deed from George W Burton and Alma H Burton dated January 11th, 1893, a certified copy of which you now hand me. I know this, it was a long time after I held the deed that it was recorded. It shows the date that it was recorded., in September, 1893; so it was a long time afterwards. It was acknowledged January 11th, 1893, and recorded September 2d, 1893. I judge that is the Home farm.

Yes, this is another deed that you hand me, signed by George W Burton and Alma H Burton, dated February 6, 1893, for all the town lots as mentioned in that section, about the same date. I think that was recorded September 2, 1893.

I expect I did receive the deeds of which these are copies, about the times those deeds purport to be signed, January 11, 1893 and February 6, 1893. I don't remember whether I was in Orleans when I received them, I think it was in Orleans. The transfer of this stock from me to Mr Jewett on February 6th, 1893, was not done while I was in Orleans, Nebraska. I don't think I was there about that date. I don't remember whether these deeds were delivered to me there at Orleans, or sent to me. My best memory is that I was there in January. I don't know whether these deeds conveyed to me practically all of the property owned by George W Burton, president of the First National Bank of Orleans, or not. I don't know how much he was holding back. My understanding was that he was deeding at that time just what the Home Farm embraced. I don't think these deeds cover more than the home farm. The lot of town lots covered by the second deed were all re-deeded. I had a talk with Mr George W Burton about that time, this was security that he was putting up on account of these advances. There was nothing said about not putting these deeds on record, except that Mr Burton said if I could hold them awhile he would be glad. I did that. He did not say I must noe put it on record. I did not get scared when I got these deeds and transfer all my stock to Mr Jewett on February 6th. It shows on its face that I was not greatly alarmed about it. I held those deeds eight months before I recorded them. I held them possibly to accommodate Mr Burton, certainly not accommodating myself very much. I put these on record the date that shows on the deed, September, 1893. Whatever date it shows that I took back the stock into

y of C. P. my own name. I know it wasn't a very good year for buying real estate. September 5 I returned certificate 84 for 95 shares in the name of F L Jewett to be reissued to myself. I think I was in Harlan county when these deeds were put on record. Don't remember when I got back, nor the time I sent the letter with this stock. My record is September 5, 1893.

These were recorded September 2, 1893. I don't know that I returned on September 5. It looks like my signature to letter of September 5, 1893, signed by Charles P Dewey, being
78 Exhibit 64. in which I sent certificate 84 for 95 shares in the name of F L Jewett and asked to have it transferred to my name. It is dated at Chicago. The letter from Manhattan Kansas, September 5, may have been written on my return. Mr Hogg was in Nebraska with me about that time. I did not examine the bills receivable of the bank, nor did he to
79 my knowledge. We asked questions of Mr Randall and Mr Burton, as usual. It was not as a result of that visit that I had this stock returned to me. I found nothing done in the way of purchasing real estate, and prices were a little higher; that was the reason. At the time I bought into this bank a list
80 of bills receivable was made to me. I was not vice president at that time. I never examined the books of the bank and never examined the bills receivable. I don't know whether A B Dewey ever examined every note, or any notes at all. I mean that was before I purchased. Neither did I ever after the purchase; neither did A B Dewey, although a director. I re-
82 quested statements of the condition of the bank sent me every two weeks but they did not send them. When they published a statement they would send one, and several times Mr Randall made statements. I did not ask to have statements made from day to day. I only knew in a general way what notes were in the bank. I don.t remember the name of Friedley. Letter of January 3, 1893, signed "C P & A B Dewey" is in my handwriting. I don't remember anything about the statements in it about a Friedley note, It is a hearsay from Mr Randall, not a personal investigation, and probably the letter was written to prod up Mr Randall. I don't know when the bank ceased
83 to pay dividends, probably in 1894. The signature "C P & A B Dewey" to letter dated December 22, 1893, is mine. I don't think I had any conversation with Mr Hogg relative to passing dividends. I do not know my reason for saying in that letter "Mr Hogg, together with ourselves, have concluded it is the best interests of the bank to pass the next dividend

of the bank", probably to keep the bank strong. My advice to Mr Randall and Mr Burton was to keep the bank strong at all times. That was about the time I sold my stock. I don't know whether they paid any dividends after that. I guess I didn't sell the last of my stock for about a year after that. If they didn't declare any dividends in 1894 they should have a surplus which they did. It made the stock that much better. Mr Jewett and Mr Killen attended to selling my stock, I was not seen in the transaction and made no representations. I didn't know of A B Dewey going out there in January or February 1895, until a good while afterwards. I think I had sold my stock at that time. I know nothing about his transaction then in any shape or form, or his taking collateral for the payment of his certificate of deposit. I don't know who told me, or whether it was a year or three years afterwards. All I know of his taking collateral is hearsay. I didn't get it from him or from his office. I think Mr Burton told me, but am not certain. My loans to the bank were deposits. They were loans on the representation that Mr Burton said he could loan money to advantage and he was getting or could get anywhere from 1 1/2 per cent a month to 3 per cent. They were made in 1893, not made particularly to sustain the bank. They paid 8 per cent interest, which didn't strike me as high for the bank to pay if it was getting 24. I only know what the cashier of the bank told me. I did not loan or advance them money until the latter part of 1893. I did not keep asking them to pay me, it shows it was paid as soon as they agreed to. I may have told them I did not consider it an indefinite loan; that I wanted it paid some time. Money I loaned about August 7 was paid about the time they said they would, December 9, 1893.

I sent certificates 14,551 and 14,552 that were not paid, for $1,000 each, issued December 7, 1893. They were not sent out for nearly two years after I sold my stock. Mr Burton told me it would be a great accommodation to leave it, and I didn't draw it till I wanted it in a big transaction, and I had to borrow some money at my bank here. I turned that in for collection, in the course of business.

I turned them in to my bank here, deposited them, and supposed of course they would be paid after I waited two years,—I supposed they would be paid on demand. It may be one was sent out in March 1895. I think it was sent direct. I understand the bank sent one by express. I did not tell them

y of C. P. 89 to, and didn't know they did it till afterwards. I don't see how that could pretty near cause a run on the bank, I don't know anything about whether it did. Mr Burton told me about it afterwards. He said the two certificates came there and the express agent had heard of several banks failing, and they are a scary set out there anyway, and I suppose he got a little alarmed, and he had a little money in the bank on certificates and presented his own before these, and drew the money, and the next day he presented these and they were short of cash and I believe they were returned not paid. I don't think when I sold out in 1894 there were any large number of notes in the bank that were there in 1891 when I bought into it, but I am not positive. I had a list of bills receivable made, about 1893, and I find many changes from 1891. There were a great many notes that were not there in 1891. Don't know whether I have that list or not. Will produce it if I can.

Occasionally I received letters from the Comptroller, and after I sold my stock, and after Mr Burton continued to use my name as vice president, there was some little complaint 90 about some things, and I requested Mr Burton to take my name off his letterheads, and I think I wrote him a second time about it, and told him I must insist that he do so; after that I did not received any letters from the Comptroller I don't remember receiving a letter from the Comptroller March 23, 1894. If I did, I sent it to Mr Burton with comments. I don't remember what the deposits of the bank were in 1891. Don't know what they were when the bank failed. Don't know as I ever saw a statement of it when the bank failed.

Adjourned to Thursday Mch 13.

I find that most of the letters signed "C P & A B Dewey" that I admitted signing, referred especially to the business 92 of C P & A B Dewey with Burton & Harvey and the bank, and I though I had a perfect right to sign them, as I was trustee for C P & A B Dewey, Two or three letters perhaps referred to something else directly but indirectly to C P & A B Dewey matters. I had been signing "C P & A B Dewey" for 12 or 14 years; we had been in partnership up to May 1, 1891, and I may have signed two or three letters inadvertently, through force of habit, but there is nothing that I can seen that is not C P & A B Dewey's business indirectly.

I have a statement before me from Mr Randall, dated Feb- 93 ruary 5, 1893. It is in Mr Randall's handwriting.

Statement offered as Exhibit "F" and is as follows:—

EXHIBIT "F".

Exhibit 18

Statement at close of business Feb 15" 1893

Resources		Liabilities	
Loans and Discounts	78,353.36	Capital stock paid in	50,000
Overdrafts	3,441.67	Surplus fund	5,000
U. S. Bonds	12,500	Natl Bank Notes outstanding	11,250
Due from Chemical Natl N. Y.	1,910.38	Deposits	65,039.28
Due from U S Natl Omaha	8,748.30	Undivided profits	758.77
Due from Capital Natl Lincoln	230.54	Certified checks	100.
Banking House, Furniture & Fxtrs	15677.95		
Other Real Estate	4,198.72		
Current Expenses	297.52		
Taxes paid	452.50		
Premiums	265.25		
Cash on hands	5,509.36		
Redemption fund	562.50		
	$132,148.05		$132,148.05

When I received this I considered the bank in about as good condition as I generally found banks. They had on hand a total of over $17,000 cash, which was about 28 per cent of their deposit account, and as a rule if banks in the West have 15 to 16 per cent on hand they are considered in pretty good condition.

I have in my hand another statement in handwriting of J A Randall, Cashier of the First National Bank of Orleans, dated March 4, 1893.

Offered as Exhibit G, and is as follows:—

EXHIBIT "G"

Statement at close of business March 3/93

Loans & Discounts	78,071.87	Capital Stock	50,000
Overdrafts	601.52	Surplus	5,000
U S Bonds	12,500	Circulation	11,250
Chemical Natl	2,574.62	Undivided profits	1,009.83
U S Natl	14,482.53	Deposits	71,216.21
Capital Natl	230.54	Certified chks	100.
First Natl Alma Cal	337.35		
Banking House	13,266.44		
97 Fur & Fxtrs	2,411.51		
Real Estate	4,198.72		
Premiums	265.25		
Redemption fund	562.50		
Expenses	461.23		
Taxes paid	432.50		
Cank	8,189.46		
	138,576.04		138,576.04

Mch 4" 93

I wanted to get this to you the 1" but it was impossible. Have several things to tell you but havn't time to day. Will try and get time to write the first of the week.

Yr vtry

JNO A RANDALL.

Cr

The statement of February 15, made a fine showing, but I noticed an overdraft of $3441, and that does not strike any banker with favor, and I wrote Mr Randall and Mr Burton
98 that they must not permit those things to the extent of $3400, but must reduce that and get it wiped out. In the statement of March 3, only two weeks, they have reduced that overdraft to $601, and it impressed me still more that they were trying to make a strong bank of it. Then they have a large cash asset, a total of $26,114 and over, or about 30 per cent of their deposit account, which is $71,216.21.

I have here a balance sheet of the First National Bank of Orleans, in the handwriting of John A Randall, cashier, dated
99 March 22, 1893.

Offered as Exhibit "H" and is as follows:—

EXHIBIT "H". Exh n 22

Statement at close of business March 22" 1893

Loans & Dis	72,971.67	Capital Stock	50,000
Overdrafts (G W B)	4.25	Surplus	5,000
U S Bonds	12,500	Circulation	11,250
Banking House	13,266.44	Undivided Profits	1,263.50
Furniture & Fxtrs	2,411.51	Deposits	72,912.46
101 Real Estate	4,198.72	Certified Checks	100
Premiums	265.25		
Expense	522.68		
Taxes paid	452.50		
Redemption fund	562.50		
Chemical Natl Bnk	2,948.49		
U S Natl Bank	22,567.55		
Capital Natl	230.54		
Cash	7,623.86		
	140,525.96		140,525.96

I was well pleased with this statement. In a little over a month they had wiped out their entire overdraft of $3441.67. They had a large amount of cash on hand, $34,000, over 40 per cent of their deposit account. I considered it a remarkably good showing.

Here is a balance sheet of the First National Bank of Or-
103 leans dated April 10 1893, in the handwriting of John A Randall, cashier.

Offered as Exhibit "I", and is as follows:—

EXHIBIT "I".

Statement at Close of business April 10" 93

Resources		Liabilities	
Loans & Discounts	70,116.64	Capital Stock	50,000
Overdraft	.53	Surplus	5,000
U S Bonds	12,500	Undivided profits	1,032.98
Banking House	13,266.44	Circulation	11,250
Furniture & Fxtrs	2,411.51	Deposits	68,685.83
Real Estate	4,280.72	Certified Checks	100
104 Premiums	265.25		
Expense	646.31		
Taxes paid	452.50		
Chemical Natl	3,723.65		
U S Natl	18,633.23		
Capital Natl	230.54		
First Natl Alma Nebr	113.75		
Redemption Fund	562.50		
Cash	8,865.24		
	136,068.81		136,068.81

When I received this statement I felt satisfied that Mr Randall and Mr Burton were trying to comply with the instructions I had given them to make the Bank a strong bank, and to avoid overdrafts.

106 I have here another balance sheer of the First National Bank of Orleans, dated May 6, 1893, in the hand-writing of John A Randall cashier.

Offered as Exhibit "J" and is as follows:—

EXHIBIT "J"

Exhibit ment 1893

At close of business May 6/93

Loans & Dis	81,749.97	Capital	50,000
Overdrafts (G W B)	4.27	Surplus	5,000
U S Bonds	12,500	Circulation	11,250
Bukg House	13,266.44	Deposit	66,206.45
Fur & Fixtures	2,411.51	Undivided profits	1,184.81
Real Estate	4,280.72	Certified Chks	100
107 Premiums	265.25		
Expenses	812.53		
Taxes paid	452.50		
Redemption fund	562.50		
U S Natl Bnk	7,049.59		
Chemical Natl	2,999.36		
Capital Natl	230.54		
Cash	7,156.08		
	133,741.26		133,741.26

B & H have a balance of $875.00. I want to ge time to write you this week but about nothing special

Yours Truly

JNO A RANDALL.

Cr.

This makes a good showing of the bank. The increase of overdrafts was insignificant.

These statements are all dated during the Spring of 1893. I sent shares of stock to be transferred to Mr Jewett, in February, 1893. There was no connection between these statements and the transfer of my stock to Mr Jewett. I considered the bank in a flourishing condition at all times. I considered it a good time to buy Chicago property, and as I had some western land that was not doing me much good, and some cash, and some bank stock, I considered I had sufficient assets to buy some of this good real estate if I could get it at satisfactory prices. There was no other connection.

110 This is a list of the bills receivable of the Bank, which I received from John A Randall, cashier. It is in his writing, and so is the letter attached to it. It is dated January 18, 1894.

Offered as Exhibit "K" and is as follows:—

EXHIBIT "K".

Orleans, Neb. Jany 18 1894

C. P. & A. B. Dewey,
Chicago, Ills.

Gentlemen:—

At last I send you the list of notes promised when you were here. You will remember that I was a little "off my feed" when you were here. While I have been at work at the Banl every day since, yet I was hardly fit to do anything. I believe
111 by a comparison with the list of a year ago, you will find that the notes are in no worse condition, and possibly a slight improvement has been made. We will keep "whacking" away, and do the best we can for the bad ones. Mr Preston has disposed of his interest in the hardware business to his partner, Mr Manning—Mr. P. starts to California Monday next—he told me to day that he wanted to leave some more money with us before he went. Everything is working nicely.

Yours tly

JNO A RANDALL.

IN JUDGMENT.

MAKER	SECURITY	DUE	AMT
S B Anderson	N F Klitzing	6- 2-91	36 00
Wm Allbaugh	Henry I Chopper	1-27-94	25 00
H E Brown	Chattel	2-10-94	60
John O Brown	"	1-16-94	50 00
C H Brown	J O Hoffman	3- 1-94	100
Geo N D Bear		1-24-94	25
August Bensel	Fritz Brockr A B Deming August Bensel	11-15-94	12 95
Fritz Brocker	A B Deming	11-15-94	73 75
John Bowen	Chattel	2-19-94	52 25
Richard Bishop	J O Hoffman	4- 1-94	38 00
C W Brown	" " "	3- 1-94	160
John O Booth	Chattel	1-27-94	17 50
August Butler	"	2-28-94	28 00
Theo Bodien	Lydia Bodien	2- 7-94	600
Geo W Burton		6-30-94	829 50
" " "		" " "	4168
M F Burton		" " "	5000
Thos C Beauchamp	G M Rowley	Dec 2-93 Bal	7 75

Maker	Security	Due	Amt
C A Bull		Sept 1093- "	245.45
J S Hoyt	V B Beem	Demand	1705
John Bowen	Chattel	3- 1-94	60
Balcom P S	"	12- 1-93 Bal	15.10
A H Burton		6-30-94	1149.80
" " "	Chattel	3- 1-94	542.
Comstock O C	"	1- 1-94	41.
112J M Cook	C M Damon	1-27-94	40
" " "	J T Merry	11-27-94	23
" " "	G M Rowley	1-27-94	37
A M Cramblet	C A Maeprang	1-27-94	56.25
R T Copeland	S W Copeland	2- 1-94	28.20
Ellis Corson			20.
Isaac Coates	In suit	5-30-90	45.
G W Cook		3-23-93	59.50
Thos Cavenaugh	In judgment	10- 1-88	107.50
Geo C Cole	Chattel	1-15-94	31.25
W A Cole	State Bank In decree	2-28-94	116.60
John Dawson	Real Estate	4-19-91 bal	376
J W Davis	Chattel	4- 1-94	128.75
" " "	John Jose	2-26-94	125
Beabenderfer H	Chattel	2-14-94	60
Dunlap Bros	J H McShane	2-25-94	1000
Francois Dubois	Chattel	2- 1-94	80.80
Jeremiah Dunlay	A E Haney	3- 1-94	300
John Davy	"	1-26-94	40
HenryDeabenderfer	Chattel	1- 1-94 Bal	53.50
Dunlay Bros	"	4- 1-94	700.
Jeremiah Dunlay	Pat Gibbas & Land	1- 1-94	3145.90
J W Edwards	J G & J W Merry & Collateral	2- 1-94	75.
P W Evans	A E Goodwin	4- 1-94	50
Finley Clinton	Chattel	4-21-94	75.00
" "	"	3-23-94	86.70
Farrell & McDonough		1- 1-94	44.10
J W Framee		demand Bal	54.35
Goddard G C & Armed	State Bank	2-28-94	250
Gilliland W F		1- 5-94	19.05
" " "	Chattel	1-20-94	381.
Gaye G A	State Bank	1- 5-94	583.40
Pat Gibbons		12-29-93	1200

	Maker	Security	Due	Amt
	Pat Gibbons		12-30-94	1000
	C H Gleason		1- 8-93	24.35
	Emma J Grafft	J W Farrell	10-24-93	150.
	John A Gahley	Chattel	1- 1-94	240
	M G Hooper	P M Hooper	2-13-94	60.
	A E Harvey		6-30-94	4453.01
	Christ Herald	Chattel Balance	11-15-94	50.
	R S Hendricks		10- 1-91	506.70
	L W Halley	Bal	5- 1-91	98.05
	V E Hull	Henri Meyer..	1-27-94	40.50
	L H Hodgeman	Chattel judgment	5-14-92	146.20
	Jonas Hedman	O Heelman	3-14-94	149.
	A E Harvey		2- 1-94	543.
	P E Hovey	M W Hovey	2- 1-94	1200
	Benj S Haywood	J D Hoffman & H T Ferguson	2- 1-94	700
	J M Hiatt	I J Hiatt	12-15-94	45
	A G Huerdin		2-15-94	26
	Inter-State Loan & Trust Co		6-30-94	5000
	C E Jordan		9-23-92	20
	Martin Joyce	Gonser & Young	11- 1-93	18
	Abraham Jones	Demand	3- 8-92	175.69
	" "	"	Feb 1-92	766.30
	C D Jones		3-22-92	332.65
	Patrick Joyce	Chattel	1- 1-94	34.
	W H Kellogg	" Bal	1- 1-94	15.
	S B Kirkpatrick	M J Kirkpatrick &	Land Demand	958.85
	N F Klitzing		9- 1-92	22.60
	Margaret C Kinsman	L Kinsman	12- 8-93	321.25
	J M Kirts	George Kirts	12-29-93	100
	F N Loesch	Chattel M	3- 1-94	62.
	John Lover	" "	10- 1-93	9.50
	S D Lane	A B Kinnir	2- 1-94	45
	C G Lacy	Bal	11-24-91	19.05
	J T Lamson	Collateral	3- 7-94	159.30
113	Joseph Lester	Chattel	2- 1-94	73.70
	W H Lee	Chattel	11-15-94	73.70
	G W Lee	"	4- 1-94	64.50
	C H Morris	"	4- 1-94	17.00
	F J Miller	" bal	9- 1-93	130.83
	William Murray	"	11-15-94	34.20
	Phillip Martin	This is the Hanson & Martin for $100	7- 5-93	132.90

Maker.	Security.	Due.	Amt.	Exh of ce
Miller D A	Chattel Inst paid to June 30, 93	4- 1-94	188.50	
Fred Mineberg	B Haney	2-27-91	700	
Henri Meyer	V E Hull	1-27-94	28	
J W Merry	J T Merry	- 1-94	144.15	
James McCay	C L Weikley bal	12- 1-93	75	
Martin McDonough J W Farrell	Chattel & Real Estate	1- 1-94	1729.65	
C H Morris	T J Morris	3-15-94	25.	
F J Morris	M M Morris	3-23-94	16.55	
Zara Moon	Chattel	2-10-94	25	
L A McNeil	bal	Demand	871.55	
Stephen Morgan & Co	S Morgan	1-16-94	20.	
Stephen Morgan	bal	1-15-94	14.40	
H F & Emma McLaughlin		9-10-92	13.40	
P H Munson	J Munson	2- 1-94	154	
H J McKee		6-30-94	536.55	
C A McGrew	M G Hooper	3- 1-94	50	
Benno Marh	Robt Skalkein		26.00	
Munson Surry	E P Young	Mr Young & I are trying to work this out of Munson for Young's benefit Young will see them paid		
		7-18-93	45	
" "	" "	7-18-93	45	
B D Mills	C W Whitney	4- 1-94	2000	
H Neubauer		Demand	1387.15	
L A Newman	Chattel	11-15-94	31.75	
Gustavo Neufelt	Chattel	4- 1-94	33.43	
Orleans College		Demand	899.10	
Byron Prickett	Chattel	7- 1-94	254.60	
A B Prince		9-15-91	25.20	
C Pope	Phoebe Pope	2- 1-94	175.00	
C W Parson	Chattel	1- 1-94	15.00	
L D Proper	C H Watt	6- 3-94	659.56	
Peter Peppert	Michael Poppert	1-27-94	31.	
Michael Poppert Jr	" "	1-27-94	18.65	
John Quinn	Chattel	4-25-94	30.	
J A Randall		2- 1-94	25.	
W M Robertson	J T Merry	2 -1-94	20	

	Maker	Security	Due	Amt
	C A Robinson	Thos B Thomas	1- 1-94	93.00
	C W Riley		4- 5-93	10.05
114	H L Roberson	Chattel	6- 1-94	107.50
	John S Robertson		4- 1-94	9.65
	Jno A Randall	(B & H)	6-30-94	2900.
	Jno A Randall	(Stock)	6-30-94	1000
	Thos Russell	Chattel	12-15-93	93.50
	Ryan C H	E P Young	10- 1-93	25.
	R Reibley		1-22-94	22.
	State Bank	Collateral	1-11-94	1000
	" "	"	1-21-94	1000
	" "	This is to be paid when due	1-29-94	500
	Thos Sheffny	L Sheffny	2-15-94	210
	John Smith		2-15-94	24
	J W Stromberg	J V Stromberg	1-21-94	25.
	School District Order	bal		43.50
	School District Order			75.
	C T Simpson		2-18-94	49.65
	H O Sitter	L L Sitter	2- 1-94	700
	A L Strohm		1-25-94	10
	Thos Sharp	Collateral	1- 1-94	312.
	J W Stromberg	J V Stromberg	1-14-94	40
	Emilie Shalkein	Robert Shalkein	3-20-94	75.
	Shook A E	Chattel	11-15-94	21.
	M T Stowell		4- 1-94	58.43
	C Thems	Chattel	1-23-94	100
	J W Trainer	"	1- 1-94	123.
	Thomas B Thomas	Chattel	4- 1-94	65
	Abram Tunison	"	3-10-94	81.15
	Ella Thomas	T J Brock bal	Demand	10.20
	W H Thashr	Chattel	2-15-94	21.60
	T M Trober	J A Randall	2-15-94	225
	O J Vallicott	State Bank Rep- City	4- 1-94	344
	W B Vincent		6-30-94	1575
	" " "		6-30-94	1228.92
	Fritz Van Hulten	Chattel	3- 1-94	55.
	J C Van Buskirk	The real estate in Beaver City was taken on this	9- 1-91	720

Maker	Security	Due	Amt	Exhibit of ce
R H Watson		6-30-91	1437.87	
Frank Wiers		11-26-93	12.	
" "		11-25-93	22.50	
H C Westerberg	S Thunnell	1-27-84	14.80	
Geo W Warner		6-30-94	277.83	
" " "		6-30-94	1147.02	
E W Yocum	Chattel Bal	5- 6-93	138.26	
Christian Zerr	A E Henry	11- 3-91 bal	81.65	
W C Brown		6-20-93	186.40	

The paper you now hand me is a list of bils receivable of the First National Bank of Prleans, made by John A Randall, cashier, and in his writing. I do not know the date No doubt along when some of those other statements were received.

Offered as Exhibit "L" and is as follows:—

120 EXHIBIT "L". Exhibit of ce

No.	Name	Amount
2479	S E Allen	342.75
2872	Wm Ayers	44.85
1878	C W Achen & J A Gibson	50.00
2129	Anderson & Anderson	10.00
2127	G W Anderson	10.00
2853	J Adams & K Thomas	20.
2588	S B Anderson & W F Kletzing	36.
2807	L T Buckley & T J Morris	10.
2704	G W Burton	95.
2705	" " "	2500
2706	" " "	2400
2710	M F Burton	2000
2711	" " "	2110
2559	M S Beem & V B Beem	123
2708	H W Burton	65
2876	Jas G Burton & Henry W Burton	120
2663	Geo Beddoe & G H Fay	90.50
2577	V B Beem	20.80
2836	O J Bacon	67.05
2854	Peter Brightholt	134.90
2557	D E Bomgardner	200
2762	Jno W Ballard	6
2819	Wm C Brown	165

2723	D E Bomgardner	85
2870	Ed Caffrey	457.85
2411	Cook & Stowell	100
2598	John Conser	42.53
2597	" "	49.75
2562	J M Cook & G M Rowley	73.60
2866 1/2	" " " " J T Merry	58.15
2587	Peter Clemo	121.90
2646	J Cripps	6.00
2564	C Chandler & Alex Schiele	50.00
2873	James A & Mary M Carlile	193.40
2815	Dunlay Bros	333
2873	" "	500
1874	John Dawson Bal	376
2761	John Erickson	14.30
2842	J W Edwards	20
2855	" " "	27
2823	Wm M Erwin	25
2734	J W Edwards	40
2817	J W Farrell & M McDonough	667.45
2558	J W Farrell	56.80
2860	David C Frisbee	510
8125	F A Friedly	600
2794	Walter Ferguson	52.50
2768	J W Farrell	78.55
2839	Pat Gibbons	1963.95
2850	J C Gaddis	5
2299	W C & Mary C Gilmore	150
2812	John A Gahley & Pat Gibbons	85
2168	C H Gleason	20
2800	C O & J W Glazier	395.47
2759	John A Goudie	117
2846	Wm T Gilliland	240
2845	" " "	75.50
2731	P E Hovey	1200
2755	" " " & M W Hovey	800
2714	A E Harvey	975
2715	" " "	4000
2746	Jonas & Brita Hedman	30
2803	J S Hoyt & V B Beem	741.83
1884	Wm M & B Hoblit	183.75
2657	" " " "	183.75
2795	S S Hasty	71.70
2631	S W Holley bal	216.85

2570	A G Huerdin		25.50	Exhibi of bo ceivi
2087	Wm Hansen & Philip Martin		100	
2747	S W & L J Hodgeman		135.55	
2491	W W Hallet, J Adams & J W Edwards		24	
2738	R S Hendricks		604.30	
2830	P E Hovey		100	
22 2791	J M Hiatt		25.80	
2124	S F Hesket		5	
2707	Inter State Loan & Trust Co		3000	
2756	A Jones		696.50	
2856	W Jennings & R R Pate		59.80	
2825	Fritz Jansen & F I Miller		143.85	
2766	C D Jones		275	
2764	" " "		30.88	
2785	N F Kletzing		4.30	
2837	L Kinsman		119.25	
1858	N F Kletzing		392.	
2848	S R & H A Knowlton		20	
2867	S B & M J Kirkpatrick		896.60	
2822	M F Kletzing		40	
2833	J T Lamson		37.80	
2648	C G Lucy & A C Robbins		200	
2583	" "		12.75	
2771	Wm H Moore & W E Moore & G M Rowley		38.40	
2568	Fannie D Muchmore	bal	69	
2659	H J McKee		360	
2660	" " "		34	
2737	J Morris & Kate Morris		28.10	
2866	James McCoy & C L Weekley		100	
2792	E E Miller & J Adams		56.75	
2793	" " " " "		338	
2776	T J Morris & Thos Russell		123.55	
2811	J T Merry & G A Merry		131.20	
2321	John Manning & C T Simpson		70.00	
2894	J W Merry & J T Merry		15.00	
2835	D R Miller & W Jennings		11	
1727	Fred & Laura Menberg		700	
23 2820	J W & T J Merry		150	
2827	Stephen Morgan	bal	25	
2563	Harry F & Emma McGlaughlin		10.80	
2826	Henri Meyer & F H Shuster		30	
2724	C A McGrew		160	
2777	Mrs J A Neighbor		50	

	2709	H Neubauer		1140
	2408	Norris		190
	2156	Orleans College	Bal	1338,85
	2847	W A Purdy		27
	2738	L D Proper & C H Watts		472.50
	854	J A Palmer & John R Kennedy		100
	2537	A B Pince		25.20
	2797	Byron & Jennie E Prickett		334.30
	2877	John Quinn		105.10
	1521	James & John Quinn		53.10
	2703	J A Randall		1000
	2702	" " "		1900
	2852	" " "		100
	2818	G M Rowley		83.50
	2155	W M Robertson & J T Merry		27.15
	2843	G M Rowley	Bal	132.10
	2851	Mrs Serillda & R W Randall		10
	1015	C W Riley		7
	2770	Thomas Russell		134.80
	2781	Stadelman & Bodien		515
	2832	" "		515
	2840	M Z Shaff		63.75
	2586	G C Searls		68.25
	2752	J W & J O Stromberg		12.50
	2587	G C Searls		25.50
	2742	H O & L L Sitler		700
	680	John & Caroline Stephenton		19
124	2529	J F Sampson		80
	2555-6-7 & 8	School District No. 20 Harlan Co		52.50
	2565	L R Sanders		76.00
	2875	A Sherwood		150
	2874	"		15
	2316	Eli Thomas & L J Brock		42.40
	2641	J W Trainer & Permecy Trainer		154.35
	2821	David & W W Thurston		49.60
	2122	Robert Terver		5
	2809	Abram Tunison & J T Merry		127.50
	2658	Henry A Travis & O J Vallicott	Bal	2
	2789	Fritz Van Hallen		28.10
	2567	O J Vallicott & B D Mills		42.50
	2175	M B Vincent		1938.50
	2559	G T Vermillion		34.
	2661	J C Van Buskirk		720
	2615	W H & Sarah Vining		118

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80	Jacob Webber		73	Exhibit of bi ceiva
63	H M Waterman	Bal	26.75	
06	Flora Waterman		50	
69	G W Warner		207.40	
75	H S Wetherell & N J Sudi		600	
05	John C & Bell Willard & W H Barrett		27	
49	C L Weekly & James McCoy		110.75	
63	Chas W Whitney & B D Mills		2000	
76	R H & S A Watson		1480.50	
08	C A White & J W Trainer		46.80	
47	T P Young		5.50	
49	Christian & Anna M Zeher		181.65	
65	B D Mills		1000	
10	J T Merry		410	
14	Dunlay Bros		500	
61	Thomas H Cavenaugh		107.65	
22	N F Kletzing		250	
62	Geo. Creddlebaugh		100.15	
58	Abraham & Joseph Miller		146.80	
59	L A & " "		45	
24	Eli W Feasel		16.20	
77	J M Cook & C M Daman		73.75	
71	Willis A Coe		88.80	
59	Anthony & L A Miller		75	
00	Wm H Thrasher		25	
71	J L Renean		5.50	
78	Emily Bennett		5	
	Beresford & Simpson		139.60	
51	C A Bull		222.25	
47	O C Robbins		72.87	
85	J K Mayo		58.15	
92				
o. 1			11355.98	
2			6855.57	
3			14164.61	
4			5017.95	
5			8148.10	
6			10088.95	
7			1318.98	
Mtgs			1755.80	
			58,705.94	

Sept. 128 Here is a letter from George W Burton. I know his handwriting and that is his signature.

Offered as Exhibit M, and is as follows:—

FIRST NATIONAL BANK.

Orleans, Neb., Sept. 23rd, 1893

Messrs. C P & A B Dewey,
Chicago, Ill.

Gentlemen:—

I have yours of the 21st inst. desiring me to send you a plat of the home farm and give valuations on separate tracts of it. A day or two ago I did this, and I presume you have received it by this time. I am not sure now whether I placed a valu-
129 ation on the 34-1/2 acre lot just South of the river. I would value it at $15 per acre, the same as the 49 acre lot just north of it. I put the valuation on all of the land in section 15 together for the reason that nearly all the buildings are on it, and by selling considerable land with the buildings we can come nearer to getting the value of the buildings. I recently came near selling the 20 acres in the southwest corner of section 15 for $2000, and the several parties here that were about to buy it were to donate thirty lots out of it for college purposes. This, however, was for the sake of the college, and otherwise I could not have sold it for that much. The greater part of the 20 acres is suitable for town lots. I should think it is worth anywhere from $1000 to $1500, and should think that $1200 would be about right. After deducting this 20 acres, there would be 318.75 acres left in section 15 if I have figured it correctly, and I think I have. Deducting the valuation of thid 20 acres from the valuation of the balance of section 15, which I gave you on the plat, will give you the valuation of the remainder of that section. As shown on the plat I sent you, there is about 128 acres in section 16 east of the railroad and about 94 acres in that section west of the railroad. I believe this letter with the letter I wrote you and the plat, answers all of your inquiries.

I enclose a letter of P: P. Payne, of Norton, regarding the
130 W 1/2 SE 1/4 and W 1/2 NE 1/4 23-3-22, Norton Co. He is the man who has had the land rented for some time past. This quarter is mortgaged for $800, which is running past due at 7% interest, the mortgage being held by my eastern friend, C E Osborne of Seneca Falls, N. Y. I could, no doubt, get

it renewed for a few years at 7% if desired. I have given him your address and suggested that he write you. I have for the past two years held this land at $1400, but have told him that if he would pay all cash above the mortgage, I would recommend you to sell it for $1350. I also told him that you sometimes sell land at ten annual payments at 7% interest, but that in such case you wanted several hundred dollars more for the land. I have also asked him how much cash his man can pay. I think likely he may write you. Exhib Lett 23.

My brother John is here from Aywood, and tells me that W H Reeves a stock man living in Atwood, and owning considerable land in the north part of Rawlins Co. has several
131 times spoken to him about buying the Cavenaugh land adjoining Atwood. I have just written Mr Reeves that you own it, and given him your address, and suggested that he write you, and told him that you sometimes sell land on ten annual payments at 7% interest, but that on such terms you would probably want a better price than it it were a cash sale or on short time. From what John tells me about Mr Reeves, I have no doubt he can be depended on to pay whatever he agrees to pay.

Yours truly,

GEO. W. BURTON

Plat of home farm offered as Exhibit N Testi De

132 Plat of home farm as well as first and second additions in and adjoining Orleans, offered as Exhibit O

I made inquiries in Orleans, and it was agreed to take deeds from Mr Burton and wife for this property, being fuly satisfied
136 it was abundane security for advances of A B Dewey and myself, and also for Mr Burton's indebtedness to the Bank. I then put definite prices on the farm and town lots, and consulted some real estate men in Orleans, some were a little higher than others, and Mr Burton highest of all. We finally settled on the lowest price offered, and Mr Burton agreed, and several of the agents, and Mr Burton, were authorized to sell the property, after I had the deeds. Mr Burton and wife
137 objected at first, but all finally consented to let the land go at $39,350 on the home farm. There was an encumbrance on the home farm. I was well acquainted with the values of real estate in Nebraska, as I owned land there and in frequent trips had various conversations with real estate men and others,
138 and also talked with farmers owning land immediately adjoining my lands.

I considered the paper of Burton & Harvey, to me and to

C. P. the Bank as well secured. In the fall of 1893 I deposited with the Bank $13,000, taking their certificate of deposit, without security. This was long after I had transferred my stock to Mr. Jewett. After I had disposed of my stock entirely I con-
139 tinued a part of my deposits there until I had need for the money Letters written by A B Dewey or at his direction signed C P & A B Dewey after August 1 1893, were unauthorized, without consultation with me, and I knew nothing
140 of them until long afterwards. I was absent most of the time for two years.

The lands shown by these two plats were conveyed to me as trustee by George W Burton in January and February, 1893, to secure A B and myself and the Bank for indebtedness Burton & Harvey or either of them individually were owing to us or this bank. The home farm was encumbered for $12000, but
141 I always considered there was a large margin of security there, even at the low price we had placed upon it. The making of the deeds January 11 and February 6 1893 and the recording of those deeds September 2 1893, emphatically had no effect upon my transferring my stock to Mr Jewett in February 1893, and his transferring it back to me in September. I never had any joint ownership with A B Dewey in the First National Bank of Orleans. Or in any of that stock. It was taken and owned separate always. We had nothing to do with each other's
142 stock. I was simply a trustee for this property to secure myself, A B Dewey and the Bank. That security had nothing to do with my stock, it was to secure the advances made afterwards, and had nothing to do with the stock after 1893. I never consulted with or advised A B Dewey as to what either of us should do with our stock. After 1893 we were not on speaking terms. Each one managed his stock in his own way always, and we had no consultations about it.

Cross-Examination of C P Dewey By Mr Lambertson.

A B Dewey and I had a conference when we purchased the stock. I think A B sent a telegram October 20 1891, to Burton & Harvey saying "On basis of selling twenty-six thousans you
143 may come here at once. We will be absent Friday." I agreed with him, and knew it was sent. The stock issued to us was not originally $26.000. I got 120 shares $12,000; A B got the same; C M Hogg got 20 shares $2,000, making $26,000. I did not write this letter of November 2, 1891. It is not my

signature, it looks like A B Dewey's, but I don't know. I did not know the signature of C P & A B Dewey had been attached to it. The stock was paid for at par, $26,000. There was a draft sent Burton & Harvey for $10,268.63 to take up their
144 indebtedness in the bank. We deposited the money with the bank. I don't know whether that was placed to the credit of C P & A B Dewey or not. That is A B Dewey's signature to Exhibit 59 of Mr Randall's testimony, "C P & A B Dewey". Part of that letter no doubt is covered by the transaction, but I do not see the $2625.97 deducted that they were owing us. Don't think I saw that letter before or after it was send. It looks like the hand-writing of Mr Shufelt, A B Dewey's brother-in-law, but I don't know who wrote the letter. Don't think we were doing business in the same office then. I can't say without referring to my record whether I paid for and took up notes of Harvey, Burton & Harvey, Peoples Trust Co and R H Porter. Our books and bookkeepers were separate. I don't propose to stand good for anything that was done by A B Dewey. I don't recall that letter, or of seeing it or a
145 copy. It does not seem to be correct; this $2625.97 that Burton & Harvey were owing us is not deducted. It may be in the grand total. According to my record $15,731.36 is correct. I know nothing about that letter.

A B Dewey is my brother, F L Jewett my step-son and C M Hogg my brother-in-law I believe Mr Hogg was a share-
149 holder in the Bank. I don't remember when he transferred his stock, think it was later than 1894. Mr Hogg and I took a trip through Kansas and Nebraska about November 16 1894. I had told him nothing about transferring my stock to Mr Jewett. Don't remember ever having any conversation with him on the subject In the spring of 1893 I told him I had been making a lot of real estate purchases in Chicago, and it
150 came about in that way that he put his stock in Mr Jewett's name. I told him had been trading my stock off for real estate. Well, I guess that was the spring of 1894. It was after I had made the purchase. I think in September 1893 we were out West together. I may have been there with him the next year, but am not certain. I do not know whether that is Mr Hogg's
151 signature to letter from Manon Kansas, November 16, 1894. It looks a little like it. I was not with him there. I don't remember of his being there, but perhaps he did—I think he did, too. We did not go over the notes at the time we were in Orleans. Mr Randall went over them, and I think made a

C. P. 152 list, which was given to Mr Hogg. I don't think Mr Hogg knew then that I had transferred my stock to Mr Jewett. I didn't tell him till after I had purchased some real estate in Chicago.

The signature to letter from Cadiz, Ohio, dated December 20 1894, looks more like Mr Hogg's signature than the other. Mr. Jewett got the stock of which he says "Enclosed ton will find my certificate for twenty shares of the First National Bank of Orleans, Nebraska. I have sold same and you will issue new certificates in the name of Fred L Jewett, and send same to Charles P Dewey, 401 Chamber of Commerce Building, Chicago, Illinois." This stock was really sold and transferred to Mr Jewett, not to me. I don't know why he did it, except that I told him I was buying real estate through Mr Jewett. I don't remember of writing him any letter about it. I have no letter's relating to the transfer of this stock to Mr
153 Jewett I don't know what Mr Jewett paid for it. Real estate was given him, don't remember what real estate. There was a lot of transactions in regard to it Our memorandum shows that ten acres of it went to Charles H Killough; that was for lot 85, Longwood subdivision, deeded to Mr Jewett. I took that property off Mr Hogg's hands if I remember right, as really intended for him, and made a settlement with him for some other matters, some securities. He held a lot of stock in the Consumer's Ice Company that failed, and which A B Dewey
154 had rather guaranteed to him he would always keep at par, and Mr Hoog agreed to take $5,000 if I also guaranteed it. I made settlement with Mr Hogg, and I think A B Dewey never did. Nothing was paid for this stock when it was transferred to Mr Jewett. I suppose it remained Mr Hogg's until transferred to Killough or some one else. I was not here. I think this stock sent by Mr Randall was received by my cashier. Mr Hogg was the first man I told that I had transferred my stock to Jewett. I don't know what he learned from
155 list of stockholders sent him by Randall in 1894. I think the statements produced this morning are all that I received. Cannot find any others. I searched but did not find any letters bearing on the condition of the Bank in 1894. I generally
156 received their published statements while I was connected with the Bank.

I think in the latter part of 1894 and 1895 Mr Killen, my cashier, and Mr Jewett sent and got some statements to show to the transferees of this stock; they inquired for them. I

think I saw one or two of them I think this bank was like all others, the deposits were somewhat reduced in 1894-5, on account of poor crops. I think there was a good crop raised there in 1894. In 1895 I think they had extra good crops, but on account of there being a half crop in any one year they got three times the price for what they did raise that they did in any other year, so there was no special loss. I am only governed by my rent roll, and in 1893-4-5 it was pretty well paid up.

I did not know the Capital National Bank of Lincoln, Nebraska failed in January, 1893, I knew it failed, but not at the time, nor much about it. I think the First National Bank of Alma also failed. That was long after the statements introduced this morning. I did not know how many notes of officers of the bank made up part of the Loans & Discounts $78,071.87. Mr Burton told me he owed the bank $4,000 or $5,000, and that his wife owed them some, and she bought some hogs, and afterwards paid her note off and had considerable profit left out of the transaction. I don't know what the total indebtedness of Burton & Harvey was at that time. I have the impression it was $12,000 or $15,000, along there. Later, in January 1894 I had a statement of all that. I know from the lists furnished that Burton and Harvey did owe the bank, but I thought it was all right. I knew Mr Burton owed the bank between 3 and 4 thousand dollars. M F Burton is Mr Burton's sister. She was assistant cashier. I think she owed the bank between 3 and 4 thousand dollars. A H Burton is Mr Burton's wife I think. I didn't know of her owing the bank $1149.80, when I was there it was $800 or $900 to buy hogs, and out of that she made a large profit and she and Mr Burton claimed she paid that off. I didn't find it out when the next list of notes came, that that was not true. They had another transaction then I think. Then I didn't know who P E Hovey was. Since learned he is Mr Harvey's father-in-law. If shown by the lists I knew he owed the bank $1200 on account of Burton & Harvey's indebtedness for their account.

Mr Burton explained to me that the Inter-State Loan and Trust Company was a sort of bank formed there to handle their real estate and loan business. I don't know who owned it, have understood both Mr Burton and Mr Harvery, as well as others there were interested. Don't know what others. When the list came I knew of that bank owing $,5000 to the First National. That was in January, 1894. Don't remember of

of C. P. knowing that Mr Harvery's wife owed the bank. I know John A Randall, he was cashier. January 1 1894 I knew he owed the bank some, also knew he owned considerable property there, and besides he had told me he would take care of it, and the collaterals I held would be security for that. Didn't know he owed $1000 for his stock. Burton & Harvey owed some debts at the bank, don't think they were excessively in-
164 debted, particularly when I was holding a large amount of securities, and I thought the bank was all right. A E Harvey is the same man. I may have said in some of my letters to the Bank that some of this collateral was to pay C P and A B Dewey first. As to the later advances we made to Burton & Harvey I expect I did say that lands and stock should be first paid to C P and A B Dewey, and if there was any excess it would be paid to the bank. In January 1895 Burton & Harvey owed C P and A B Dewey over $9000, and the same amount to A B Dewey in notes, and then $2000 or $3000 each for interest money we had advanced for taxes on the home farm and other matters. Probably $3000 or $4000 over the 18000, altogether, something like $22000 at that time. Up to this time it is a great deal more, I don't know how much. It has never been wiped out. I don't recollect about taking a deed
165 to any property in 1897 and relinquishing my liability to Burton & Harvey. There was some transactions growing out of the former business—I think I must have made a deed to Mr Burton for his town lots there in Orleans probably as late as 1897. I think September 14 1897, George W Burton and Alma H Burton made me a quit claim deed to the home farm. Mr Burton in the first place gave me a deed to the home farm, which was to secure Burton & Harvey's obligation to A B Dewey and myself, and the bank afterwards and a long time after I sold my stock I heard that this first conveyance was only really a mortgage, and I mentioned it to Mr Burton and he said "Yes, that is the way the laws of Nebraska would treat it." that it was only a mortgage given to me in the first place. "Now, you want to make me a quit claim deed to se-
166 cure all this", and this is a quit claim to release their rights in the home farm, as I understand it, without going more into it. I think that is the description that that covers. I had a deed from Mr Harvey covering his homestead in Arapahoe, and another piece of land from the town, probably 240 acres, in one, and 160 in the other, both heavily encumbered. Don't recall the amount. Had a deed from Burton for five lots in

Los Angeles. There was some 6 or 8 lots in San Dimas, and then there was a tract of 20 acres of out-lying land that Mr Burton said he paid $150 an acre for, $3,000 for the tract of 20 acres. I think these were all made to C P Dewey, but
167 it was understood I held them in trust for C P & A B Dewey and the bank, and I thought at that time that it was ample security. Both of us out of the whole business I think got $3,000 or $4,000.

The home farm was encumbered for $12000; Mr. Harvey's two places for $3,000; no encumbrance on the California property. Mr Burton transferred to me by deed 20 or 30 quarters
168 in Harlan and Furnace and Hayes counties, Nebraska, in which he thought he had equities, but it never proved so. All had mortgages from $500 to $1000 and I paid the taxes for a time, thinking, as Mr Harvey said, there should be equities of $500 to a $1000 in some, and in 1895 or 6 I discovered the taxes and interest had not been paid and I made up my mind there was not much equity there. I considered I had a large amount of good securities. I supposed at first we would have $30,000 equity in the home farm, but we didnt Things got so bad in 1895 and everything looked as if going to the dogs, and I felt poor and didn't have the money to pay off the $12000 mortgage on the home farm. Think I paid the interest on
169 that up to 1895 or 6. Mr Burton got the rents, don't know why he didn't pay the interest and taxes. A B got part of all this land, the land was not all sold, I hold some of it yet. Didn't turn any over to the bank. The full and distince understanding was we were to be paid first, and the bank subsequently.

Comparing statement to Comptroller Dec 19 1894, with statement put in evidence of March 3, 1893: In March, 1893,
170 by statement of Mr Randall, cashier, loans and discounts were $78,071.87. In the December statement they were $68,235.17. Deposits, March 1893. $71,216.21; Deceber 1894, $39,522.19. March 1893, cash on hand $26,347. December 1894, $6,159.30. The per cent of cash to the deposits December statement was about 15% in March statement about 35% to 38%. I never saw this December statement before.

Statement made December 17, 1896, I never saw before either, It shows deposit account of $33,588.10. Cash on
171 hand $3585.78, about 11 per cent of the deposits. I think I received one or two complaining letters from the Comptroller, of some little thing, no more complaint that was made to me

C. P. when I was formerly cashier of a bank in Ohio, Harrison National, with $700,000 deposit account. I used to get letters complaining every now and then.

Eberhardt, Dubbs and Kendig were substantial Chicago citizens, Eberhardt I believe lived at Chicago Lawn, which is in the Southwest part of Chicago, 6 or 7 miles from the post
172 office, with street car connections. Don't know what Eberhardt is regarded today, but at one time he was regarded quite wealthy. We paid off that mortgage of $5,000 on the property, and own the property still. I am waiting for a better price to sell it. It is not in anyone's hands for sale, I sell my own property, and Mr Killen for me. That property was purchased December 10, 1894 from L Eberhardt, R Dubbs and Albert C Kendig. Block 2 in Eberhardt' Robinson & Goetz' subdivision of the East 1/2, Southwest 1/4, Northeast 1/2 of section 14-38-13, Cook County Chicago, being a part of the Chicago Lawn property. There was no other encumbrance than the $5,000, which was paid. I think there were some taxes, part
173 we assumed and part they paid, the contract is here and will show. We traded for that land as part of the consideration 160 acres in Rawlins County, Kansas, the southwestern part of Kansas, about 50 miles from the Colorado line. The land in Rawlins County had sold for $1500, $2000 and $2500 a quarter. I had my price on it $10 an acre, $1600 a quarter. Dubbs was an owner in that property, I don't know where he lives, never met him, never met A C Kendig, don't know who he is, don't know L Eberhardt, I know Frank Eberhardt. There are 49 or 50 lots, a whole block there, I have had offers on single lots, I hold them at $300 or $400, in 1891 they were selling at $400 to $600. Don't know whether I have sold any of those or not. Not much property selling in Chicago in the last 4 or 5 years.

Jules W Jouvenat is a respectable lawyer here in Chicago,
175 I know him, bought property of him and sold property to him, after this deal. I paid him $11,000, $5500 of which was cash on a Master's sale, which I took out. I traded him Dundee County land, two quarters, $2500, it was worth that. Don't remember where I got the Dundee County land, don't know what I paid for it, I think more than $500, but am not positive.
176 That is Dundee (Dundy) County Nebraska, couldn't tell where, near a town and well located. Never saw it, but have seen land around it, no other encumbrances on the Jouvenat property. I still own this Conrad Seipp's subdivision, have

never particularly offered it for sale, I have had some nibbles on it in offers,

As to the second property bought of Dubbs and Kendig, Chicago, Lawn, that was December, 1894, $9,000, $4,000 en-
177 cumbrance, which I paid. I think no other encumbrance, 31 to 35 lots I bought of Dubbs and Kendig, don.t believe I efer had any offer on that, I expect they are worth $400 or $500 now. Saw them a year or so ago.

Charles H Killough was at that time quite a property holder
178 in Chicago, think he was a real estate dealer. There was an encumbrance of $1500 on that property, which I paid. The total amount was $8250, I paid $37.50 cash. I think I put the bank stock in as $3,000 There was one lot in Longwood's subdivision and two lots in Ashland Subdivision. Nice lots. Never had any offer on any of these lots. Real estate has been depressed here for some years, showing itself the latter part of 1892, the era of low prices coming just before the panic of 1893. I don't know Charles H Killough.

January 9, 1895, the consideration in the purchase from L Joucenat was $1900, encumbrance $900. Put in $1,000
179 stock. Three lots in that deal. I own them yet, have had an offer on the basis of low prices, and since then we have spent $500 or $600 improving those lots and they will sell for twice what I paid. They are 5 or 6 miles from the post office, right South. Killough lots are maybe 12 miles or more on the suburban line of the Rock Island.

Re-direct Examination by Mr Thompson.

The fact that the property lies 5 or 6 miles from the post office does not indicate that tis low priced property. Hyde
180 Park station is 6 1/2 miles from Randolph Street. Residence lots there on East End avenue, a little over 6 1/2 miles out, is selling for $200 a front foot; you can buy property 2 1/2 miles out for $100. In Evanston, 17 or 18 miles out, is property that will bring $200 a foot.

The $3,000 realized from all this was not in cash, it was simply a value I placed on it from others I have had and from the opinion of the property and my appraisal of it. I realized it by getting the title to two pieces of ground. Those lots in California and the other piece. I own probably 5,000 lots in Chicago, including what are owned by syndicates that I
181 control. I didn't make any difference in the prices of these

C. P. properties because I put in bank stock. I considered the stock worth par. I considered that property was really cheaper at the price I was getting it than the bank stock looked to me at par. I owned some stock in other companies at that time, but not much. Had no tangible stock at that time to trade.
182 I owned some stock in the Consumer's Ice Company, which I guess was offered to one or two of them, but Mr Killen and Mr Jewett could see that bank stock was more in demand than ice stock. Don.t remember whether I put any of that stock in Mr Jewrtts name or not. I could see bank stock was bound to be more desirable than ice stock. Both went under,
183 the Ice Company first. I regarded both as at par, in fact I paid a little more than par for some of the ice stock. I hold a good many stocks in a good many different companies now. Not in the name of Mr Jewett, he is now in West Virginia, mining and shipping coal, working for his brother, I think he is manager. In one or two cases I think he had some of the stock
184 in his name. At the time I put this stock in his hands in 1893 he was secretary and one of the managers of the Consumers Ice Company. Think he held a little of their stock. Don't know certain. I know he held some real estate because I sold it to him.

———x———

C. T. CHARLES T KILLEN, being first duly sworn, testified as follows:—(See page 185)

Charles T Killen, residence Lakeside, Cook County, Illinois, in the real estate business, with C P Dewey. Was there in
185 1893-4-5 and have been ever since. Prior to February 1893, he purchased land in the name of F L Jewett. I negotiated the purchases mentioned in his testimony here, including the one from Eberhardt, Dubbs & Kendig, dated December 10, 1894. I made no representations to them as to the stock of the First National Bank of Orleans. I furnished them with the printed bank statements. The different exhibits to F L Jewett's testimony are copies of the contracts for those various purchases, and also the deeds from F L Jewett conveying the property to Charles P Dewey later. No representations as to the bank stock was made in any of them except the printed statements. We told them to investigate for themselves. I don't know definitely the financial condition of L Eberhardt,

R Dubbs and Albert C Kendig at that time, but I understood they were sound and owned their property. Jules W Jouvenat I also understood had other property. Mr Killough I considered financially good. I understood he had considerable property here in Chicago. Emil Jouvenat is a brother of Charles, and Jules W is a son of Charles. I dealt with Charles,
186 who represented both of them. There was no understanding outside of the contract. C P Dewey said nothing then or before that time indicating that that stock was not worth par, and I had no knowledge it was not. Mr Killough said he would require a few days time to investigate; he wrote to a friend
188 at Kearney Nebraska, asking about the bank, and after he received a reply the deal was closed. I don't know what the reply was, nor what the others did about investigating. I think the first I knew there was any trouble about the bank's solvency was when it failed. I know the stock was transferred to Mr Jewett to facilitate the buying of real estate here in Chicago. It was thought the business could be done better in his name, as when a large holder of real estate is buying it is considered a good time to put prices up. I know of no other reason.

Cross-Examination by Mr Lambertson.

Mr C P Dewey owned about 5000 lots in Chicago, and his residence. I have charge of the office work; have for about 13 1/2 years. I also buy and sell real estate, and make loans.
189 Our business is looking after his personal interests. They are quite varied, real estate, loans, rents and so forth. We bought some property about 1888 and 9 on the Southwest side of Chicago that was put in Mr Jewett.s name, for the same reason. About 300 or 400 acres.

That property was not transferred to Mr Jewett by C P Dewey. It is not a custom to put Mr Dewey's property in
190 some one else's name when we want to sell it. Generally deal openly and fairly. That sometimes applies to stocks also. Don't know of any other stocks that have ever been put in the name
191 of Mr Jewett. Mr Dewey had bought property frequently prior to this time, direct. He usually uses the name of Mr Jewett in later deals, since 1888 and 9. That is out of the usual. I think it is 6 or 7 years since Mr Dewey bought any property in Chicago. It practically ended with this transaction. This stock was kept in the vault in our office. It was handed to Mr Jewett then handed back to Mr Dewey. I think

probably he took it home with him, but don.t know. it was brought back and put in the bank and kept there part of the time. Don't think these people asked who Mr Jewett was, I said I represented some one by the name of Jewett. I did
192 not sell property for anyone but C P Dewey. I told them we were buying some property, representing Mr Jewett, made the proposition, after consideration the contract was entered into and the deal closed. The contract was always with Mr Jewett, and the property deeded to him. I don't think it was known to them that C P Dewey intended to take up the encumbrance.
193 I think they saw Mr Jewett. I am quite sure he met them. I can't say who of them. He may have met Mr Eberhardt and Mr Killough. I am not certain. Don't think he met Mr Dubbs or Mr Kendig. He may have met Charles Jouvenat. I was the agent who conducted all of these deals. Subsequently this property was all deeded to C P Dewey. We delivered
194 the stock sold to them, and assigned it. Think we left it for them to have it transferred on the books. I don't know when it was transferred. I was not present when it was decided
195 to put this stock in the name of Mr Jewett, didn't hear any conversation between Mr Dewey and Mr Jewett. All I know is what Mr Jewett told me. Think probably I talked with Mr Dewey about it. He said he was going to put the stock in the name of Mr Jewett. Never to my knowledge was any other stock put in Mr Jewett's name. I never looked up the property owned by Mr Eberhardt, Dubbs and Kendig and Killough, don't know what they owned or the encumbrance,
196 the same as to the Jouvenats. I only know what they told me at the time the deals were made, in a general way. Don;t know anything about their assets and liabilities. Mr Jouvenat is a lawyer in Chicago, offices on Washington Street.

Re-direct Examination Mr Thompson.

Mr Dewey never bought other Chicago property in any name
197 but his and Mr Jewetts. Out west he has bought in the name of myself, J C Jones, F B Elliott, H C Braunhouse and J W Radcliffe, and then they transferred to him. The negotiations were opened in the usual way by hearsay, and different ways,
198 I think we saw some property advertised for sale. Don't remembers the particulars of any special deal. We answered the advertisements and made the application to them.

I didn't learn till long after it was done that A P Dewey

had been to Orleans in January 1895 and obtained collateral for his certificate of deposit. Don't remember how I learned it. Don't think Mr Harvey told me, or A B Deqey. May have been his clerk. Don't remember whether I told C P Dewey of it. I remember when these certificates of deposit were sent out for collection and when one or two were returned unpaid. Tney were deposited in our bank in Chicago. Don't think we told them to send it by express. I think the custom had been to send certificaes to the Bank of Orleans after we had received remittances from them. Don't remember sending them through a Chicago bank before. Don't know why we did that. Don't remember any talk with C P Dewey about it. Thought the First National Bank of Orleans was good at that time. Don.t know any reason why we changed the custom of sending them out. They were in our bank for collection. Don't recall that we asked payment and were refused. Think we were getting 8% on those certificates, had about $2,000 on deposit when the bank failed. C P Dewey never borrowed any money from that bank to my knowledge, nor did A B Dewey. We bought some of this property in 1894, December, and some in January 1895. Gave them the last printed bank statement. Got them from the Bank. Went over it with them I think in a general way, explained to them it was the statement of the bank to the Comptroller. May have gone over the items, don't know as I could explain their significance, couldn't say I went over them with anyone in particular. I might have done so. It is possible I did. I think my memory is we looked them over together. I made no representations whatever, gave them the printed statement and told them to make any investigation they thought best. I didn't know the financial condition of the bank. I repreesented Mr Dewey, he had been connected with it a number of years, and had been vice president. I wrote so e of the letters he sent to the bank, and saw only a part of the letters from thrm. Talked with him about it in a general way. I thought the bank was all right. I told them we had no representations to make, to investigate as they chose. The best bank stock is subject to change and I thought best to say nothing about the condition of the bank one way or the other. Don't know whether we have any of those statements in the office or not. Havn't looked. If we have I will produce them. We did not ake any effort to trade off this bank stock for real estate from February to September, 1893. Didn.t think it a good time to buy property.

I remember in a general way when that stock was first transferred. February 1893. Don't remember whether I was present.
206 Probably most of the assignments and transfers were in my handwriting. The use of the word "sell", that was simply in the printed form and we filled out the blank. It was only filling out the blank. I think some of these people asked me if the bank was paying dividends. I told them not at present. I don t remember telling them anything else. Didn't tell them why it was not paying dividends, I didn't know.

The first dividend was passed December 22, 1893. The
207 bank had not paid a dividend I think for a year, about before we traded off this stock. I think we told them the passing of the dividend was done to strengthen the bank. Don't think we told them anything about the crops, don.t remember discussing that at all. I made no representations at all.

Re-direct Examination by Mr Thompson

I did not know, definitely that they had a large amount of bad paper. Don't remember the time in 1895 we deposited
208 these two certificates. It was in 1895 after Mr Dewey ceased to have connection with the bank. We simply deposited those with other matters. Don't remember whether Mr Dewey had occasion then to check out more money than he had in the bank without those. Can't say whether he checked out against them before he was notified they were unpaid. Don't know whether I deposited them or not, don.t think any directions were given about them. When not paid Mr Dewey let it run over. I don't know why. I think they said they were a little
209 short of funds at that time was the reason they were not paid. Can't say whether I have a letter from the Orleans Bank relative to that or not.

Recalled.

I find statements showing condition of the bank October 2, 1894 and December 19, 1894, which I produce

(Attached marked Exhibits P) and Q).

210 To my recollection both of these were shown to the purchasers, the first in part of the deals, the later one in later deals. Some deals were made before the last report was received and signed. I don't remember when the certificate of Mr Hogg was sent to Mr Dewey. I was not book keeper for Mr Dewey at that time, Mr Nauerman was. Don't remember whether there is an account with Mr Hogg in Mr Dewey's

books or not. Don't remember how that stock was paid for that was sent to Mr Dewey by Mr Hogg; there was a settlement made, I don't remember its terms. Testim Charl Kille

I don't know whether it was agreed that Mr Dewey should pay 25 per cent on the dollar for the stock and take it up, or
216 not. I might be able to trace it out. Letter written December 4 1893 signed by C P Dewey, being Ex 78 of Mr Randall's deposition, is in my handwriting. I wrote some of Mr Dewey's letters. Exhibit 65 of Mr Randall's deposition is my handwriting. C P Dewey wrote the signature C P & A B Dewey to that.

———x———

CHARLES JOUVENAT being first duly sworn, testified as follows:— Testim Charl nat.

Reside in Chicago, am a real estate dealer. Mr E P Davis conducted the negotiations for this sale. I was conversant with
217 it through his reports to me. In that transaction there was 20 shares of stock in the First National Bank of Orleans Nebraska used to apply on the purchase price at its par value. I think Mr Davis investigated in regard to it, he was interested in the deal with me. Another deal was made, subsequently, on January 9, 1895, with E Jouvenat. I conducted that, I think all the negotiations were with Mr Killen. Don't think
218 I had any talk with anybody else. I don't remember. In that transaction Mr Jewett, the person to whom I was making the sale assumed an encumbrance of $900. The consideration was $1900. He paid the balance $1000 by 10 shares of stock of the Orleans Bank. The examinations made regarding the bank in the prior purchase had a bearing upon the acceptance of the stock in the second. No communication came from C P Dewey with reference to such communications. There was no urging to accept the stock that I knew of. We were shown a statement of the bank, sworn to, a report of the officers, which looked to me all right. I understood of course they were having dull times in Nebraska. I am telling you the conclusion I came to. No one told me. That on account of the hard times
219 it had not paid a dividend that year of 1894, but the bank was solvent and everything would come out all right the following year. That was the understanding I got. I expect Mr Davis and I talked the matter over. I never saw Mr Dewey

in the matter at all, or had any conversation with him. In the first transaction I told Mr Davis we ought to have more of the stock, because we were not getting the price we asked for our property. There was a mortgage on the property. It was a fine property and I wanted more money. Mr Davis reported they refused to give any more. I think I wanted $500 more so as to make up the price we wanted for the property. The stock went to my son, J W Jouvenat.

Cross-Examination by Mr Lambertson

My son was in the real estate business at that time. Don't remember why I took it in his name, it is eight years ago. He
220 and I were doing business together, and he was holding certain pieces of property for me. He was then about 27 years old. As I remember the capital stock of the Bank was $50,000. Don't know anything about what dividends it had paid prior to that time. Don't remember the amount of its deposits, and had no information except what was in the printed statement given me. I suppose Mr Davis got that from Mr Dewey's office. All I know about the first deal I got from Mr Davis.
221 He conducted those negotiations. I was in Nebraska in 1894, Albion, Boone County, where I have a brother, and knew there was a failure of crops, as far as I could see a total failure from Chicago out. October or November 1894 I was out there.
222 I know relief was sent in 1894 to Nebraska, but I had great faith in the state. I talked with the president of the Bank after purchasing this stock. I did not know this stock was
223 owned by C P Dewey when I bought it. Mr Jewett was the only man I knew about.

We bought the stock knowing a dividend has been passed, that there was a drought, the crops a total failure that year,
224 and without knowledge of the stock except as appeared on the face of the certificate and paid par value in property. I don't think you ought to say the amount at which that was put was merely nominal. We had our prices on that property. Mr Davis started the deal, I learned of the property through him; he was interested in this property. In the first transaction the title was in me. It was transferred directly to my son. We traded the property for the stock. If an assessment had been made on the stock I would not have had to pay it, because I never to[illegible]ne stock. I was the real owner of the stock, but it was held in my son.s name. It is not a question of whether

he paid for it. There was a consideration of love and affection. This property was located near where the World's Fair was held. The nominal consideration put in the contract was $11,000; there was a mortgage of $4500. I don't know of any
225 assessments against it, don t think there were any other en-
226 cumbrances. Mr Jewett assumed the encumbrance. I didn't inquire as to his ability to pay it off. I didn't know he was a step-son of C P Dewey.

The second transaction I conducted myself. Emil Jouvenat is my brother, it was his property I sold, what the consideration was I don't remember. There were three lots; don't remember how much cash we got out of the first trade. In the second there was none; it went the other way. We paid $40 to $50 back taxes and interest on the lot, and the encumbrance
227 was assumed. In 1894 sale of property in that part of the City was slow, it commenced about that time, a reaction from the Worlds Fair, then we had the panic of 1893 besides. Property around the World's Fair had been overboomed, but we did not sell it at boom prices. The encumbrance was due, we were not able to pay it, that was one of the inducements of the trade. I don't remember how much cash was paid, In the first one; I think $1,000. It was $4500 and $1000 cash, but I think it took the entire amount to clear it up. You might say the principal inducement was to get rid of the encumbrance and to get the cash. I won't say that was the principal inducement. There was a Master's certificate, the property had been sold under foreclosure. It was really under Master's certificate when we bought it. Mr Davis and I bought it together. I don.t remember what we paid. Can't tell you how long beofre this we had vbought it, I think within a year, maybe within six months. The stock ran about a year before we disposed of it. Letter written November 7, 1895, is signed by Mr
229 Davis; "I enclose ten shares", I don't know anything about that. I think we sold the stock to a man named Fowler. Did not sell to Eli K Gougar, I think the certificate was transferred in blank. My signature is attached to letter dated December 26, 1894, addressed to J Randall Cashier, C Jouvenat. I signed the letter dated December 31, 1894. We traded that stock for farm lands, I think to Charles Fowler, a real estate man here. We got some farm lands up in Wisconsin, but I
230 don.t remember how much stock was given him. That is my son's signature to certificate #108. It was transferred in blank. I don't know whose hand-writing that is, maybe Mr Davis'. That was only 10 shares.

Re-direct Examination by Mr. Thompson.

The fact that crops happened to fail for one year didn't have the effect on me of rendering enterprises in that state
231 desperate or worthless, because I saw the crops were bad in Iowa and Illinois, all the way along. No one place worse than another. Not a particle worse in Nebraska than in Iowa.

I am not liable for a stock assessment, and if I was liable I couldn't pay it. My son is working on a salary making a
232 living. That is all. I know something of Emil's responsibility, he could not pay the assessment. At the time of this transaction my financial condition was good, and I was able to pay the amount of this stock from other resources than this property. I had considerable property in my hands at that time. Most of it not encumbered. I lost it since the panic of 1893, since the World's Fair. I didn't make anything, and had to live.

———x———

ELISHA T DAVIS being duly sworn, testified as follows:—

Examined by Mr. Thompson.

Residence Park Ridge, Illinois. Real estate business, about 13 years. I negotiated the transaction closed December 14
233 1894, for the sale to F L Jewett of lots 1, 2, 3, 4 in Bryant's Subdivision of lots 5 and 6, Conrad Seipp's subdivision in section 25-38-14, with Mr Killen. Understood Mr Jewett was purchasing the property. Knew nothing of C P Dewey having any interest in it. The price on the property was not increased because the purchase price was part bank stock. The price paid was the price we were asking in cash. I had no knowledge to lead me to think that the stock was worth less than par, and treated it at par.

Cross-Examination by Mr. Lambertson.

We got an interest in the property out of this. I got a commission on the sale, from Mr Jouvenat. I was simply the
234 agent. I was interested in the property, think I got half the cash. Never saw Mr Jewett nor C P Dewey. A statement was furnished to me, I gave it to Mr Jouvenat. Printed state-

ment, made to the Comptroller. I went over it with Mr Killen, just looked it over. I did not sell this stock to them, I think some went to a man named Eli Gougar, a board of trade man. He is dead now. I think he got some Michigan City property for the stock, but am not certain. I don't think I conducted the negotiations, Don't think Mr Killen told me the bank had not paid a dividend. Made no effort to get more of the stock. Don't remember how I came in touch with Mr Killen, we were both in this building at the time. I think I went first to see him. I went there to make the exchange. Don't remember much about that.

Test. Eli

———x———

CHARLES H KILLOUGH being duly sworn, testified as follows:— Test. Ch. K.

Examined by Mr. Harvey, for defendants.

Residence 5506 Greenwood Avenue, am managing the busi-
237 ness of W B Allis & Company, manufacturers of physicians furniture. December 1894 and January 1895 was residing 1810 Michigan Avenue. I purchased some stock in the Orleans Bank, January 10, 1895, $1500 from Mr Jewett in one of our transactions. There was another transaction January 10, 1895. This second transaction was a contract for lot 85 Longwood's subdivision and lots 23 and 24 Ashland subdivision, adjoining the other. The last two lots belonged to my uncle Benjamin Minor of Indianapolis. I think there was $3,000 of the stock altogether, 30 shares. We took $3750 cash, $3000 bank stock and assumption of $1500 on my own property in Longwood by the purchaser, Mr Jewett. I considered my property was sold at a fair value, nothing exorbitant. I held this stock
239 for a time and then transferred it to Mr Hatcher of Oak Park, who was regarded as a man of wealth. At the time I purchased this stock if an assessment had been made on the $3,000 I would have been able to pay it.

Cross-Examination by Mr. Lambertson.

I became a stockholder in that bank by the transfer of this stock, which was transferred to me on the books of the bank.
242 I never saw the books of the bank, Don't remember having

any communication with the bank. When the deal was closed the certificates were delivered to me, endorsed, properly, as I supposed. I wrote to Mr Dryden, my cousin, in Kearney and got an opinion on the bank and wrote to other parties in that region. I didn't go it blind. I would not have taken the stock if I hadn't thought it reasonably good, but don.t remember whether I wrote the bank about the transfer or not.

Certificate #96 is one that I purchased, also #97; that is my own signature, and #100, and certificate #101, 10 shares
244 each. I read them at the time. Never noticed the words "Transferrable only on the books of the bank in person or by attorney on surrender of this certificate." That is my signature on the four certificates, transfering it to I G Hatcher. I delivered them to him. Don't think I sent them to the bank, I thought all that was necessary was to transfer them on the
246 back. I supposed as a matter of self interest Mr Hatcher would do that. I never had a transaction in bank stock before, and was not acquainted with the method. I looked over the bank statement carefully in Mr Dewey's office. I understood the bank was not paying dividends at the time I bought. I was then in the same business I am now, and my only real estate business was my private deals. I was not able to pay an
248 assessment on it. I transferred it for the same that I paid for it, which I got in stock of another concern in which I was then interested, called the Bureau of Law & Equity. I paid
249 the balance in money. This property was southwest from the post office, ten miles or more. $2,000 of this money went to me and $1750 to my uncle. The Ashland subdivision property was clear. No buildings on either property. My lot was 100
251 by 170 feet. I think I came in touch with Mr Killen through an advertisement, and I went to Mr Killen. Held the stock
252 from Jan 10 to February 6.

Re-direct Examination by Mr. Harvey.

I didn't see Mr Jewett at all. Think I talked with C P Dewey on one or two points, but practically all the business
253 was done with Mr Killen. Don't think I talked with Mr Dewey about the standing of the bank. Didn't know Mr Dewey ever owned thr stock. Supposed I was dealing with Mr Jewett. Mr Killen told me Mr Jewett owned the stock.

———x———

270 CIRCUIT COURT OF THE UNITED STATES, Placit

Northern District of Illinois,

Northern Division.

John W. McDonald, Receiver of the First National Bank of Orleans, Nebraska,

vs.

Charles P. Dewey, Frederick L. Jewett, Jules W. Jouvenat, C. C. Hatcher, whose first name is unknown, Emile M. Jouvenat, A. C. Kendig, whose first name is unknown, William Mathison and Andrew K. Park, } In Chancery 25141.

MR. F. M. HALL,
MR. EUGENE E. PRUSSING,
MR. WILLIAM BROWN, JR.
MR. HOYT KING,
Solicitors for Complainant.
MR. R. S. THOMPSON,
MR. A. E. HARVEY,
Solicitors for Respondent,
C. P. DEWEY.

271 Pleas in the Circuit Court of the United States for the Northern District of Illinois—Northern Division, in Chancery sitting at the United States Court room in the City of Chicago, in said District and Division, before the Honorable Christian C. Kohlsaat, District Judge of the United States for the Northern District of Illinois, on Wednesday, the Fourth day of November, being one of the days of the regular July term of said Court, in the year of our Lord, one thousand nine hundred and three and of our independence the one hundred and twenty-eighth year.

MARSHALL E. SAMPSELL,
Clerk.

plaint. 272 Northern District of Illinois—

Northern Division.

Peter O. Hedlund, Receiver of The First National Bank of Orleans, Nebraska,
vs.
Charles P. Dewey, et., al.
} In Chancery 25141.

Be it remembered that on this day to-wit: the 21st day of April 1899, came the complainant in the above entitled cause by his solicitors, Messrs. Prussing and McCulloch and Mr. G. M. Lambertson, and filed in the clerk's office of said Court a certain Bill of Complaint in words and figures following, to-wit:

273 In the Circuit Court of the United States,

For the Northern District of Illinois—

Northern Division.

Peter O. Hedlund, Receiver of the First National Bank of Orleans, Nebraska,
Complainant,
vs.
Charles P. Dewey and others,
Respondents.
} Bill.

Peter O. Hedlund, a resident of Lincoln, Nebraska, and a citizen of the State of Nebraska, brings this his bill against Charles P. Dewey, F. L. Jewett, whose first name is unknown, Jules W. Jouvenat, C. C. Hatcher, whose first name is unknown, Emile M. Jouvenat, A. C. Kindig, whose first name is unknown, William Mathison, Andrew K. Park, all residents of the City of Chicago, Illinois, and citizens of the State of Illinois, and thereupon your orator complains and says.

1. That the First National Bank of Orleans, Nebraska, is a banking association organized and lately doing business under and by virtue of the laws of the United States, and located within the State and District of Nebraska. That on or about the twentieth day of May 1897, the said First National Bank of Orleans, Nebraska, failed and became and was insolvent, and the Comptroller of the Currency of the United States became and was satisfied of

the insolvency of said national banking association, that thereupon on or about the fifth day of June 1897, after due examination of the affairs of said association, the said Comptroller of the Cur-
274 rency appointed said Peter O. Hedlund, receiver of said First National Bank of Orleans, Nebraska; that said Peter O. Hedlund qualified as such receiver, and entered upon the duties of said office, and took possession of said bank, its books, records and assets and proceeded to close up said association, and is now engaged in winding up the affairs of said bank.

Bill filed 189

2. Your orator further alleges that on or about the 14th day of September 1897, the Comptroller of the Currency of the United States, at the City of Washington, in the District of Columbia, made, issued, declared, signed, sealed with the seal of his office, and published his order and proclamation of that date in and by which he declared that:

Whereas, upon a proper accounting by the receiver theretofore appointed to collect the assets of the First National Bank of Orleans, Nebraska, and upon a valuation of the uncollected assets remaining in his hands, it did appear to the satisfaction of said Comptroller that in order to pay the debts of said association it is necessary to enforce the individual liability of the stockholders therefor to the extent thereinafter mentioned, as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States; that therefore by virtue of the authority in him vested by law, he did thereby make assessment and requisition upon the shareholders of said First National Bank of Orleans, Nebraska, for forty-three thousand dollars or eighty-six dollars upon each and every share of capital stock of said association held or owned by them respectively at the time of its failure, and thereby did direct your orator by the name and designation of Peter O. Hedlund receiver theretofore appointed to take all necessary proceedings, by suit or otherwise, to enforce to that extent the individual liability of said shareholders, of
275 all of which the said respondents, Charles P. Dewey, F. L. Jewett, whose first name is unknown, Jules W. Jouvenat, C. C. Hatcher, whose first name is unknown, Emile M. Jouvenat, A. C. Kindig, whose first name is unknown, Eli K. Gougar, William Mathison, and Andrew K. Park, had notice.

3. Your orator further alleges and represents to your honors that on or about the eighth day of May 1894, the said respondent, Charles P. Dewey, and for a long time previous thereto was the owner and holder of, and had standing in his name on the books of said First National Bank of Orleans, Nebraska, one hundred and five (105) shares of the capital stock of said First National Bank,

plaint, ¶ 21. which was evidenced by certificates duly and properly issued to him by said First National Bank of Orleans, Nebraska.

4. Your orator further shows to the court that on said last named date, and for a long time prior thereto, the said respondent Charles P. Dewey, was a director of the First National Bank of Orleans, Nebraska.

Your orator further shows to the court that on the said eighth day of May 1894, and for a long time both before and after said date, the said First National Bank of Orleans, Nebraska, was in a failing condition, and was in fact insolvent, which was known to the said respondent, Charles P. Dewey, personally as well as officially in his capacity as such director.

Your orator represents to your honors that said respondent, Charles P. Dewey, being fully advised of and knowing the failing condition and insolvency of said bank, and in the expectation and anticipation of the early and near approaching failure of said bank, and the necessary enforcement of his liability as a shareholder of said bank, and to defraud the said bank, its depositors and creditors out
276 of the security afforded by the law upon and against shareholders of national banks, and render it impossible in case of the failure of said bank, which the said respondent believed and had reason to believe was imminent and could not be long delayed, to place it out of the power of the Comptroller of the Currency to enforce the contingent liability of him, the said respondent, to contribute not to exceed one hundred cents one the dollar of the par value of the shares of stock owned and held by him as hereinbfore stated, in case of the failure of said bank and its inability to pay its depositors and other creditors out of its ordinary resources, and without resorting to an assessment upon its capital stock in the hands of its shareholders, and for the purpose of evading and avoiding such liability and cheating, wronging and defrauding the said bank, and its depositors and creditors, the Comptroller of the Currency and the receiver of said bank of their lawful rights and remedies in the premises, did on or about the eighth day of May 1894, sell and cause to be transferred on the books of said bank, by proceeding regular in form, but which your orator upon information and belief, alleges were and are colorable only, and not made in good faith, ninety-five shares and on the third day of January 1895, ten shares of the capital stock of said First National Bank of Orleans, Nebraska, so owned and held by him as aforesaid, to one F. L. Jewett, whose first name is unknown to your orator, whom your orator has been informed and believes and so charges upon information and belief is and was at the date last aforesaid pecuniarily an irresponsible person, and a person of and from whom the amount of

such assessment upon the shares of said capital stock so owned and held by said respondent, could not be made by legal process or otherwise. So that your orator by reason of the pretended sales and
277 transfers of the said stock by and from the said respondent to the said F. L. Jewett and the insolvency of the said F. L. Jewett and his pecuniary inability to respond to damages as hereinbefore set forth and stated, your orator is deprived of his remedy at law for the collection of so much of the assessment of forty- three thousand dollars, made upon the capital stock of said First National Bank, as is applicable to the one hundred and five shares thereof owned and otherwise held by the said Charles P. Dewey.

Bill filed 18

5. Your orator further shows to your honors that subsequent transfers of said one hundred and five shares of stock, were made by the said F. L. Jewett and his transferees, until at the date of the failure of said bank, the said one hundred and five shares of stock, so as aforesaid fraudulently and illegally transferred by the said Charles P. Dewey to the said F. L. Jewett, stood upon the books of the said bank in the names of Andrew K. Park six shares; William Mathison 4 shares, Jules W. Jouvenat 10 shares; Emile Jouvenat 10 shares; C. C. Hatcher 30 shares, A. C. Kindig 20 shares, F. L. Jewett 25 shares.

6. Your orator further shows to your honors upon information and belief that all of said intermediate transfers of said stock from the said F. L. Jewett to the said various transferees, as well as the present holders of said stock, in whose names said stock stands upon the books of said First National Bank of Orleans, were fraudulent, colorable and collusive and were made to persons who were financially irresponsible and unable to respond to the said assessments, and each of the said transfers were made in contemplation of the insolvency of the bank, and for the purpose and with the intent of evading, escaping and avoiding the individual liability imposed by the statute upon the holders of said stock.

Your orator further shows to your honors that the said First
278 National Bank of Orleans, was insolvent for a long time antedating the transfer of said stock by the said Charles P. Dewey, and continued insolvent until the failure and closing of the said First National Bank.

Your orator shows that said assessment is now due and the same has not been paid either wholly or in part by the said respondents or any other stockholder or person.

Wherefore your orator alleges and shows to your honors that the said liability imposed by the statute has already attached to the said stock while the same was in the hands of the said Charles P. Dewey and before the same was transferred and assigned by him as

aforesaid to the said F. L. Jewett, and the action of the said Charles P. Dewey in transferring said stock with the purpose and intent of evading and escaping his statutory liability, is contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises. In tender consideration whereof, and forasmuch as your orator is entirely remediless by the strict rules of the common law, and can only have relief in a court of equity where matters of this kind are properly cognizable to the end therefore, that the said Charles P. Dewey and the said F. L. Jewett, Andrew K. Park, William Mathison, Jules W. Jouvenat, Emile Jouvenat, C. C. Hatcher, and A. C. Kindig, respondents herein may full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as though the same were hereinafter repeated, and they thereunto distinctly interrogated, but the answer in or under oath of the said respondents is hereby waived, and the complainant prays that upon consideration thereof, your honors find that the said respondent, Charles P. Dewey, is the true and lawful owner of the said one hundred and five shares of the capital stock of the
279 First National Bank of Orleans, Nebraska, hereinbefore mentioned, and that the transfer of the said shares of stock by the said Charles P. Dewey to the said F. L. Jewett, and to subsequent transferees, including the said persons in whose names the said stock stands upon the books of the bank, to-wit: F. L. Jewett, 25 shares; Andrew K. Park 6 shares; William Mathison 4 shares; Jules W. Jouvenat 10 shares C. C. Hatcher 30 shares; Emile Jouvenat 10 shares and A. C. Kindig 20 shares, may be set aside, and the title to said stock be vested, both in fact as well as upon the books of the bank, in the name of the said Charles P. Dewey, and may adjudge and decree that he pay to your orator the assessments thereon made by the Comptroller of the Currency, as hereinbefore stated, in the sum and amount of nine thousand and thirty dollars, together with lawful interest upon said sum from the 14th day of September 1897, together with the cost of this action and a reasonable solicitors' fee for its conduct and prosecution, and that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience.

May it please your honors to grant unto your orator a writ of summons or subpoena issuing out of this Honorable Court to be directed to the said Charles P. Dewey, Andrew K. Park, William Mathison, F. L. Jewett, Jules W. Jouvenat, Emile Jouvenat, C. C. Hatcher, and A. C. Kindig, thereby commanding them under a certain penalty therein to be specified, to be and appear personally before your honors on a certain day then and there to answer all and

ngular the premises, and to stand to and abide by such order and ecree therein as to your honors may seem meet and your orator will er pray.

PETER O. HEDLUND,
Receiver of the First National Bank of Orleans,
30 *Nebraska.*
By PRUSSING & MCCULLOCH,
Solicitors for Complainant.

. M. LAMBERTSON,
Of Counsel.

(Endorsed) Filed April 21, 1899, S. W. Burnham, Clerk.

31 And on the same day to-wit: the 21st day of April, 1899, there issued out of the clerk's office of said court in said entled cause a certain Subpoena directed to the marshal of said Disict to execute, which said subpoena together with the marshal's turn thereon endorsed is in the words and figures following to-it: Subpoena Ap

32 United States of America,
Northern District of Illinois, } ss.
Northern Division.

he United States of America, To Charles P. Dewey, Andrew K. Park, William Mathison, F. L. Jewett, Jules W. Jouvenat, Emile Jouvenat, C. C. Hatcher and A. C. Kindig, Greeting:

We command you and Every of You, that you Appear before our udges of our Circuit Court of the United States of America, for ie Northern District of Illinois, at Chicago, in the Northern Divisn of said District, on the first Monday in the Month of June next, answer the bill of complaint of Peter O. Hedlund, Receiver of ie First National Bank of Orleans, Nebraska, this day filed in the lerk's office of said Court, in said City of Chicago, then and ere to receive and abide by such judgment and decree as shall ien or thereafter be made, upon pain of judgment being pronounced gainst you by default.

To the Marshal of the Northern District of Illinois to Execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United tates of America, at Chicago, aforesaid, this 21st day of April the Year of our Lord one thousand eight hundred and ninety-ine, and of our independence the 123rd year.

S. W. BURNHAM,
SEAL] *Clerk.*

MEMORANDUM.

The above named defendants are notified that unless they and each of them shall enter their appearance in the Clerk's office of said Court, at Chicago aforesaid, on or before the day to which the above Writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

S. W. BURNHAM,
Clerk.

eturn.

MARSHAL'S RETURN.

I have served the within writ within my district in the following manner, to-wit:

Upon the within named A. C. Kindig impleaded with Chas. P. Dewey, et al by delivering a true copy thereof to him personally on the 3rd day of August A. D. 1901.

JAMES C. AMES,
U. S. Marshal,
By H. C. WADE,
Deputy.

(Endorsed) Filed Aug. 6, 1901, S. W. Burnham, Clerk.

And on to-wit: the 14th day of July, 1899, came Charles P. Dewey by his solicitor and filed in the clerk's office of said Court in said entitled cause a certain answer to the bill of complaint in words and figures following to-wit:

ANSWER OF CHARLES P. DEWEY.

Answer 14.

—1—

United States of America, }
Northern District of Illinois. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois.

In Chancery:

Peter O. Hedlund, Receiver of the First National Bank of Orleans, Nebraska, *Complainant,*
vs.
Charles P. Dewey, *et., al.,* *Defendants.*
} Gen. No. 25,141.

The answer of Charles P. Dewey, defendant, to the bill of complaint of Peter O. Hedlund, Receiver, of the First National Bank of Orleans, Nebraska, complainant.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained for answer thereto or to so much and such parts thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering, says, etc.

This defendant admits that the First National Bank of Orleans, Nebraska, is a bank organized and lately doing business under and by virtue of the laws of the United States and located within the State and District of Nebraska; that on or about the 20th day of May 1897, the said First National Bank of Orleans, Nebraska, failed and became insolvent, and the Comptroller of the Currency of the United States then became and was satisfied of the insolvency of the said national banking association; that thereupon or or about the 5th day of June 1897, and after due examination of the affairs of said association said Comptroller of the Currency appointed the said Peter O. Hedlund, Receiver of said First National Bank of Orleans, Nebraska; that said Peter O. Hedlund qualified as such Re-

1st July ceiver and entered upon the duties of said office and took possession of said Bank and its books, records, and assets and proceeded to close up said association and is now engaged in winding up the affairs of said bank.

Further answering, this defendant admits the issuance by the Comptroller of the Currency of the United States on or about the 14th day of September 1897, his proclamation that it appeared to his satisfaction that in order to pay the debts of said association it was necessary to enforce the individual liability of the stock holders therefor, and levying an assessment and requisition upon the share-holders of said Bank for forty-three thousand dollars ($43,000.00) or Eighty-six Dollars ($86.00) upon each and every share of the capital stock of said association held or owned by them respectively at the time of the failure of said Bank, and directing the complainant as Receiver of said Bank to take the necessary proceedings by suit or otherwise to enforce to that extent the individual liability of said share holders.

This defendant further answering, admits that on or about the 8th day of May 1894, he was the owner and holder of and had standing in his name on the books of the said First National Bank of Orleans, Nebraska, one hundred and five (105) shares of the capital stock of the said First National Bank, which was evidenced by certificates duly and properly issued to him by said Bank.

Further answering, this defendant denies that on the said last named date and for a long time prior thereto, or at any time or at all this defendant was a director of the First National Bank of Orleans, Nebraska.

Further answering this defendant denies that on the said 8th day of May 1894, the said First National Bank of Orleans, Nebraska, was in a failing condition or was in fact insolvent; and this defendant denies that he knew of any such insolvency either personally or in any official capacity or at all, and again denies that at the said date or at any time prior to the month of May 1897, the said Bank was in a failing condition or was insolvent.

This defendant admits that on or about the 8th day of May, 1894, he assigned and caused to be transferred on the books of said bank ninety-five (95) shares and on or about the 3rd day of January 1895, ten (10) shares of the capital stock of said First National Bank of Orleans, Nebraska, so owned and held by him as aforesaid to Frederick L. Jewett, impleaded herein under the style of F. L. Jewett.

And this defendant further says that in said matter and in the subsequent sales and transfers of said stock by the said Jewett, he, the said Jewett, acted merely as the agent and trustee for this de-

ndant, and held the said stock so transferred by the defendant to Answer 14.
m and subsequently sold, assigned and transferred the same for the
le benefit an as the agent and trustee of this defendant and under
is defendant's directions.

And this defendant denies that he was then fully or at all advised
or knew of the alleged failing condition and insolvency of said
ank; and denies that such transfers were made in the expectation
anticipation of any failure of said Bank and the enforcement of
ny liability of this defendant as a share holder of said Bank; and
enies that the said transfers were made to defraud the said Bank
its depositors or creditors out of the security afforded by law
pon and against share holders of national banks, or to render it im-
ossible, in case of failure of said Bank, to enforce the contingent
ability of this defendant to contribute not to exceed one hundred
100) cents on the dollar of the par value of the shares of stock so
wned by him; and denies that the said transfers were for the pur-
ose of evading and avoiding such liability or cheating or wronging
r defrauding the said Bank or its depositors or creditors or the
omptroller of the Currency, or the Receiver of said Bank, or any or
ither of them or any other person or persons of their lawful rights
nd remedies in the premises. And this defendant denies that the
aid transfers were made for any or either of the wrongful purposes
said bill alleged, and alleges that at the time of the said transfers
the said Jewett the said Jewett was in the employ of this defendant
and about this defendant's business in Chicago, Illinois, and that
he said transfers of said stock to said Jewett were made for the pur-
ose of facilitating proper assignments and transfers thereof to pos-
ible purchasers thereof, the frequent absence of this defendant from
he City of Chicago making such a course advisable.

Funrther answering, this defendant denies that at the time of
aid transfers the said defendant knew of the alleged failing condi-
ion or insolvency of said Bank, and denies that at the time of said
ransfers or either of them the said Bank was in a failing condition
r insolvent, and alleges that at the time of said transfers and each
f them the said Bank was solvent.

Further answering, this defendant denies upon information and
elief, that the said Frederick L. Jewett, is or was at the dates of
aid transfers to him or sales and transfers by him hereinafter set forth
ecuniarily an irresponsible person and a person of and from whom
he amount of any assessment upon the shares of said capital stock
o assigned to him could not be made by legal process or otherwise;
ut this defendant alleges that the pecuniary condition of the said
Jewett is wholly immaterial, as the said Jewett was never at any time

July the owner of any of the said shares of stock so transferred by this defendant to him, and that the ownership of said stock remained in this defendant until the subsequent sales and transfers thereof by the said Jewett (acting for and as the agent of this defendant) hereinafter set forth, and that the said transfers by this defendant to the said Jewett were as heretofore alleged simply to meet the contingency of this defendant being absent from the City and to facilitate the transfer of said stock when sold, of all of which matters the said Bank through its officers then and there had full knowledge.

Further answering, this defendant admits the transfers of the said stock by the said Frederick L. Jewett alleged in said bill, but denies that the said transfers or any or either of them were fraudulent, colorable, or collusive, or to persons financially irresponsible and unable to respond to said assessments, and denies that either or any of said transfers were made in contemplation of the insolvency of the said Bank and for the purpose or with the intent of evading, escaping or avoiding the individual liability imposed by Statute upon the holders of said stock. This defendant alleges that all of said transfers of said stock by said Jewett were for the use and benefit and under the direction of this defendant and were made in good faith, for a valuable consideration, and without knowledge or any failing or insolvent condition of the said Bank; And this defendant alleges that all of said transfers so made by said Jewett so acting as the agent of this defendant were made while the said Bank was solvent. This defendant further denies that the First National Bank of Orleans, Nebraska, was insolvent for a long time antedating the said transfers of said stock and alleges that said Bank did not become insolvent until about May 1897.

Further answering, this defendant alleges that long prior to the insolvency of said Bank, to-wit, prior to January 21st, 1895, and while the said Bank was, and was believed by this defendant to be, wholly, solvent, the said Jewett, acting as the agent and for the benefit and under the direction of this defendant, sold in separate lots to several different purchasers all of said shares of stock so owned by this defendant and so standing in the name of said Jewett. And this defendant alleges that each and every of said sales was made in good faith, in the regular course of business, for a valuable consideration (to-wit, the par value of said stock), and that in each case (as the defendant is informed and believes, the purchasers were persons pecuniarily responsible; and this defendant denies that said sales or any of them were fraudulent, colorable, or collusive, or made to persons unable to respond to assessments on said stock, or made in contemplation of the insolvency of said Bank, or for the purpose

or with the intent of evading, escaping or avoiding the individual liability imposed by the Statute upon the holders of said stock. Ans 1

Further answering, this defendant alleges that in the case of each and every of said sales of stock, certificates representing the number of shares sold were delivered to the purchaser by the said Jewett, (the agent of this defendant as hereinbefore set forth) bearing the proper endorsement transferring the same to the purchaser and the proper power of attorney for the transfer of said stock upon the books of said Bank. And this defendant shows that all of said shares of stock so owned by this defendant and so sold and transferred by his said agent as above set forth (except possibly twenty-five (25) shares hereinafter mentioned) were in fact long prior to the failure of the said Bank and while said Bank was solvent and at or about the time of the said sales and transfers thereof duly transferred upon the Books of said Bank to the several purchasers thereof; as to twenty-five (25) shares of stock which the said complainant alleges still remained untransferred upon the books of said bank at the time of the said failure, this defendant says that he has no knowledge as to the truth or falsity of said allegations except the statement in said complainant's bill and can, therefore neither admit nor deny said allegation, but leaves the complainant to make strict proof thereof.

Further answering this defendant says, however, that upon each and every sale of his said stock a proper power of attorney was duly placed upon said stock certificate authorizing the transfer of said stock upon the books of the Bank to the purchasers in each case; and this defendant had always supposed that the books of said Bank did in fact show all of the said transfers of stock so sold and transferred by the said Jewett as above set forth.

Further answering, this defendant shows that the said Bank through its President and Cashier had full knowledge of the said sales and transfers of the said stock of this defendant and knew this defendant had ceased to be a stockholder long before the said Bank became insolvent or in a failing condition.

Further answering, this defendant says that he has no knowledge as to any sales or transfers or any portions of the said stock so owned by him which were made by owners or holders thereof subsequent to the said Jewett.

And this defendant further answering, says, that he is informed and believes and charges the fact to be that no liability of said First National Bank of Orleans existing at the time of the transfer of the said stock by the said Jewett on behalf of this defendant, to-wit, prior to the first day of February 1895, remained unpaid at the date of the insolvency of said Bank in May 1897; and further that all the

1 July indebtedness of said Bank existing at the time of the failure of said Bank in May 1897, was indebtedness which accrued subsequent to the sale of said stock by the said Jewett on behalf of this defendant.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged without this that there is any other matter, cause or thing in complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief, of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct; and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CHARLES P. DEWEY,
By R. S. THOMPSON
His Solicitor.

R. S. THOMPSON,
Solicitor for Defendant Charles P. Dewey.

(Endorsed) Filed Jul. 14, 1899. S. W. Burnham, Clerk.

And on to-wit: the 6th day of May 1901, came the complainant in said entitled cause and filed in the clerk's office of said Court a certain replication to the several answers of Charles P. Dewey and F. L. Jewett, which said replication is in words and figures following, to-wit:

REPLICATION.

United States of America,
Northern District of Illinois, } ss.
Northern Division,

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Peter O. Hedlund, receiver of the First National Bank of Orleans, Nebraska,
vs.
Charles P. Dewey, *et., al.,* } 25141.

The replication of Peter O. Hedlund, receiver of the First National Bank of Orleans, Nebraska, complainant to the several answers of the defendants, Charles P. Dewey and F. L. Jewett.

This repliant, saying and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of each of the said answers of the said defendants for replication thereunto says that he doth and will aver, maintain and prove his bill of complaint to be true, certain and sufficient in the law, to be answered unto by the said defendants, and that each of the said answers of said defendants is uncertain, untrue and insufficient to be replied unto by this repliant without this that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied is true. All which matters and things this repliant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays, as in and by his said bill of complaint he hath already prayed.

EUGENE E. PEUSSING,
Solicitor for said Complainant.

(Endorsed) Filed May 6, 1901, S. W. Burnham, Clerk.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

The United States of America, to A. C. Kindig, Impleaded with Charles P. Dewey, et al., Greeting:

We again command you and Every of You, that you appear before our judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Northern Division of said District, on the first Monday in the Month of September next, to answer the bill of complaint of John W. McDonald, as receiver of the First National Bank of Orleans, Nebraska, heretofore filed in the Clerk's office of said Court, in said City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois to Execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this second day of August, in the Year of our Lord one thousand nine hundred and one and of our Independence the 126th year.

S. W. BURNHAM,
Clerk.

[SEAL]

MEMORANDUM.

The above named defendant is notified that unless he and each of them shall enter his appearance in the Clerk's office of said Court, at Chicago aforesaid, on or before the day to which the about Writ is returnable, the complainant's bill will be taken against him as confessed, and a decree entered accordingly.

S. W. BURNHAM,
Clerk.

MARSHAL' RETURN.

Return mo 6, 19

I have served the within writ within my district in the following manner to-wit:

Upon the within named A. C. Kindig impleaded with Chas. P. Dewey et. al by delivering a true copy thereof to him personally on the 3rd day of August A. D. 1901.

JOHN C. AMES,
U. S. Marshal.
By H. C. WADE,
Deputy.

(Endorsed) Filed Aug. 6, 1901, S. W. Burnham, Clerk.

And on to-wit: the 27th day of January 1903, in the December term of said Court 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF JANUARY 27, 1903.

Order 1903

John W. McDonald, Receiver,
vs.
Charles P. Dewey, et al. } 25141.

Now come the parties by their solicitors, and it appearing to the Court that the defendants herein, Charles C. Hatcher, and Emelie M. Jouvenant have been duly served by process of subpoena, and have failed to plead to the bill herein, and said defendants being ruled to plead instanter and failing and refusing so to do, and being three times called in open court come not, it is thereupon considered and adjudged by the Court that the default of said defendants, Charles C. Hatcher and Emelie M. Jouvenant be and the same is hereby entered, and thereupon on the further motion of the complainant, it is ordered that this cause be and the same is hereby dismissed as to Jules W. Jouvenant, A. C. Kindig and Andrew K. Park, and thereupon this cause is set down for final hearing upon pleadings and proofs, and the hearing not being concluded when the hour for adjournment arrived, the further hearing is postponed until tomorrow morning.

of Max
ann.

MAX J. MAUERMANN sworn, and questioned by attorney for complainant.

My name is Max J. Mauermann. I reside in Chicago, Illinois, and am in the employ of A. B. Dewey; before that I was in the employ of C. P. Dewey & Company, and prior to that was in the employ of C. P. & A. B. Dewey. I began working for them sometime in December 1889, and worked for them until their dissolution which was in 1891, in the month of May, and after the dissolution I continued in the office of C. P. Dewey up to the 31st day of March 1896.

While working for C. P. and A. B. Dewey I worked as office boy, writing letters at their dictation; after the dissolution in May 1891, when I started to work for C. P. Dewey I took charge of the books of both C. P. & A. B. Dewey and C. P. Dewey & Company, did general book-keeping and wrote letters, and was familiar with business transactions in the office of C. P. & A. B. Dewey and also of C. P. Dewey. The relations of C. P. and A. B. Dewey at the time of the dissolution were very friendly and continued so until the end of 1894. I had an opportunity of knowing that fact as I was right in the office of C. P. Dewey nearly all of the time up to 1896. A. B. Dewey would frequently call at the office of C. P. Dewey and their interviews would take place at the desk of C. P. Dewey which was probably four or five feet from my desk, he would call almost daily and their interviews were always very cordial and friendly. Mr. A. B. Dewey would frequently call at the office about lunch time and they would go to lunch together, and sometimes they would come back together and sometimes C. P. Dewey would come back alone, and there was no break in the character of those relations between them prior to December 1894. When A. B. Dewey wrote letters relative to old firm matters of C. P. & A. B. Dewey they were copied in a copy book kept in the office of C. P. Dewey in which letters pertaining to business in which they were still jointly interested were copied: sometimes these letters were written at C. P. Dewey's dictation at his own office and sometimes they were written at A. B. Dewey's dictation at his office, but they were usually copied in this letter book kept at C. P. Dewey's office. A. B. Dewey would sometimes bring the letters over and sometimes his clerk, Mr. Shufeldt.

I recall a transaction of A. B. Dewey's that was attended to by C. P. Dewey in A. B. Dewey's absence from the City, being the sale of some property at the corner of Madison & Roby Streets of

which A. B. Dewey owned a portion, also C. P. Dewey owned a portion, and their mother and niece owned part. Mr. A. B. Dewey came into C. P. Dewey's office one day in the summer of 1894, and brought with him Mr. M. D. Dean, a real estate broker, and he told C. P. Dewey that he had been figuring with Mr. Dean for the sale of all this property to the Lewis Institute, that he had the matter about consummated except that one or more of the trustees of the Lewis Institute was away from home and it was necessary that they should be there to close the matter up. Mr. A. B. Dewey left on his vacation after that, and the matter was closed up by Mr. C. P. Dewey. During A. B. Dewey's absence Mr. C. P. Dewey wrote him one letter in relation to the transaction. Mr. A. B. Dewey was spending the Summer at Chatam, New York. The letter is as follows:

Complts Exhibit 1, A. D. W. Exhibit Letter 14, 1

Office of C. P. Dewey & Co.,
401 & 402 Chamber of Commerce Bldg.,
S. E. Cor. LaSalle & Washington Sts.

Chicago, Sept. 14, 1894.

Mr. A. B. Dewey,
Chatam, N. Y.

Dear Brother:

I have had a good deal of trouble with the Lewis Estate deal, which I can better explain in person than by letter, but I have had talked frequently, with all of them, and whilst the decision could not be hastened, the matter has had to take its course.

From $110,000.00 and we pay commissions to Dean, they have finally lowered the price to $107,000 and they pay Dean commissions although their talk has been, for some time, on the basis of $107,000 and we allow them $2500 out of this amount to settle Dean's commissions themselves. The last talk I had with Mr. McLaren, was that the price would be $107,000, net, and they assume the 1904 taxes. I prepared the deeds and presented them yesterday to Judge Stanford, their attorney, and he objected to them assuming the taxes.

I went to see Mr. McLaren this morning, and he now denies having agreed to pay them.

I told him that we had made so many concessions already, that we would concede nothing further. I feel that they want the property, and may decide to pay the taxes themselves, yet we may have to do it in order to make the deal.

I have drwn the deeds the other way however (that is, they to assume the taxes) and I thought it was best to get them back here and ready, to close the deal in whatever way it is thought best'

Sept. The consideration in each deed is as follows:

Nancy Dewey	Lots 16, 17 and 18,	$11400.
Nannie M. Peterson	Lots 12, 13, 14, & 15	$10600
A. B. Dewey	" 7, 8, 9, 10 & 11	$59500
C. P. Dewey	" 4, 5, 6	$25500

I enclose your deed herewith, that you and Louise may execute and return.

Please instruct if we had best agree to pay the taxes if nothing better can be done.

I have just lately returned from Galveston, Texas, after a hot trip where I was called, through a telegram from Edward Scott. I found the Stratton case had got into bad shape, owing to neglect of our attorneys. I made the best arrangement I could, and will explain on your return. I said to Burton, that we would advance money to pay his mortgage interest, if he would quit-claim to us, but he has made no reply.

Affectionately,

CHARLIE.

Q. State whether you recall any event or incident of a social character between yourself and C. P. & A. B. Dewey relative to a trip to the Exposition? Well, one Saturday afternoon in September 1893 Mr. Dewey invited Mr. A. B. Dewey and myself to go to the afternoon performance of Buffalo Bills and from there we had lunch and went into the World's Fair ground and spent the evening on the Midway Plaisance. The friendly relations between Mr. A. B. Dewey snd C. P. Dewey was a matter of common knowledge, everybody at the plant of the Consumers Ice Company must have known that they were on friendly relations because they spent considerable time there up to the latter part of 1894. The ice plant went into the hands of a receiver I think in May or June 1895. But the time when the final breach occurred between C. P. and A. B. Dewey was in the latter part of November or December 1894, and it was occasioned by a difference in opinion as to the matter of salary which was drawn by A. B. Dewey at the Consumers Pure Ice Company where he was President. He had once before divided his salary with C. P. Dewey and in December 1894, he was not inclined to make a division. C. P. Dewey had credited up half of the salary on the books of the Ice Company to his account. When A. B. Dewey found that C. P. Dewey had credited up half of that salary he had it charged back and credited to his own account. C. P. Dewey came down to his office one morning and told Mr. Killen to call up Mr. A. B. Dewey on the telephone and ask him why he had charged half that salary back out of his account, and,

of course, I did not hear what A. B. Dewey said, but they got pretty heated and C. P. Dewey took the receiver and the arguments got pretty warm and that was the end of it. I do not think that A. B. Dewey ever called up C. P. Dewey after that, but before that from the time of the dissolution his calls had been very frequent except during the latter part of October and the month of November 1894 they were not so frequent. They during these visits had frequent conversations relative to the First National Bank of Orleans, and Burton and Harvey and the Consumers Pure Ice Company, in which they were both interested, in my presence.

Cross-Examination by Mr. Thompson.

Q. Prior to the dissolution of the partnership and in April 1891, were you present when any altercation took place between A. B. Dewey and C. P. Dewey? Yes, they had some difference of opinion as to commissions whether one man was to get it or another man. Mr. A. B. Dewey claimed that Shufeldt, who was A. B. Dewey's father-in-law, should get them, and Mr. C. P. Dewey claimed a man by the name of Flood was entitled to it, and Mr. A. B. Dewey thought on account of the relations between him and Mr. Shufeldt that the remarks of C. P. Dewey were somewhat personal and took offense at them, and Mr. A. B. Dewey shook his fist at C. P. Dewey but did not touch him, and told him that he did not want to be talked to in that way, and did threaten to knock him down, but after that the relations were pleasant, and they went to lunch together on the same day. This all happened in March 1891 sometime and they dissolved partnership in May. Harry Shufeldt remained in the office of C. P. Dewey for a period of three or four weeks after A. B. Dewey left. He was a brother-in-law of A. B. Dewey.

Mr. A. B. Dewey had his office in the Merchants Building first and about five years afterwards took his office in the Chamber of Commerce.

Q. Didn't A. B. Dewey insist that C. P. Dewey ought to retain him in his office (meaning Harry Shufeldt)? After the dissolution the matter of offices expenses and matters of that kind came up between C. P. and A. B. Dewey, and C. P. Dewey claimed that he was keeping an office and making a division and should be compensated for the expenses, clerk hire, telephone and office rent. Mr. A. B. Dewey made a computation of his clerk hire, of the salary paid by him to Shufeldt and that was put in as an offset. I do not know that there was any troublt about it.

The Consumers Ice Company went into the hands of a receiver I think the 15th day of June 1895.

When asked if witness informed A. B. Dewey that C. P. Dewey was selling his bank stock in the First National Bank of Orleans witness says he never gave A. B. Dewey any information regarding C. P. Dewey's business while in the latter's employ as there was no occasion for it as the men were in almost daily consultation with each other.

In regard to the sale of the property which I have heretofore spoken about the only trouble or dispute which arose was that A. B. Dewey did not think that C. P. Dewey should have charged him 2½ per cent commission on the amount of his interest, and Mr. C. P. Dewey took the position that he was doing a great many things for A. B. Dewey that ought to be allowed at that time and the matter was passed off. The commission was deducted from the proceeds of Mr. Dewey's property although Mr. A. B. Dewey has never acquiesced in that yet. They have been threatening each other with suit for four or five years. The only dispute that I ever heard between the two men was the one that I have heretofore spoken about. I never heard them have any dispute in regard to some business that they had in Texas prior to 1894. Their relations since 1894 have been such that they do not speak to each other at all. Mr. A. B. Dewey never expressed to me his opinion of C. P. Dewey although he has occasionally talked of him. A. B. Dewey feels aggrieved towards his brother but he is a gentleman and does not speak in harsh terms of anyone, not even his brother.

There was a suit by this same receiver against A. B. Dewey on his stock in this same bank, which I think was settled prior to the time A. B. Dewey gave his testimony in this case.

In answer to the question if A. B. Dewey had ever said to witness that he hoped C. P. Dewey would be beaten in this case witness says no, although witness states that he has talked with A. B. Dewey about this case. Witness states that he has read over the testimony of C. P. Dewey given in the case but not aloud, only one or two paragraphs which he read in the presence of Mr. Hall and Mr. A. B. Dewey in reference to C. P. Dewey's testimony at Manhattan.

Re-direct Examination by Mr. Hall.

Q. Who was the attorney or legal adviser during 1893 and 1894 of C. P. and A. B. Dewey? A. Mr. E. F. Runyan of Runyan & Runyan. He lives here in Chicago. He was the attorney that they usually advised with during 1893 and 1894.

The disagreement in March 1891, as far as I could observe, never affected the relations of the Deweys subsequently, A. B. Dewey

continued to office right in the same office as before. They differed sometimes on questions of business and policy and the course to be pursued. At the time of the dissolution they had business interests together running into hundreds of thousands of dollars that had to be closed up subsequently, but those are practically all closed out now. Syndicate matters and things of that kind the interest of each was divided, there was a separate interest, and it was almost the same as one man holding a block of stock in a corporation. Mr. C. P. Dewey still continues to act as trustee in some of those corporations where A. B. Dewey is a large stockholder.

FRANK ISRAEL sworn, and questioned on behalf of the Complainants. Tes

My name is Frank Israel, age sixty-two years; business, real estate and insurance; residence, Benkleman, Nebraska, and have resided there since 1885.

In reply to question as to knowledge of real estate values in Dundy County and as to the value at the present time of the northeast quarter of section twenty-five, township two, range thirty-nine West, in Dundy County, Nebraska, witness says he is somewhat acquainted with the values of land, and thinks the above described quarter is worth $225.00.

In reply to question as to the fair and reasonable value of the above described quarter in December 1894 witness states there was no established value to any lands in Dundy County at that time for the reason that it was only occasionally that any was selling; that the owners asked a larger consideration and could find no purchasers, the price being about $500.00, and the present time its value about $225.00.

Witness states he has examined the records of Dundy County, Nebraska, and finds in October 1901, a deed made from A. B. Dewey to Charles P. Dewey under date of February 8, 1892, Consideration $405.00. He further states that he finds a deed, after examining the records of Dundy County, Nebraska, under date of December 24, 1894, from Charles Jouvenat and wife to Elisha T. Davis, consideration $1600.00. I also find from my examination a deed from Elisha T. Davis and wife to W. P. Hardwick under date of October 17, 1901, consideration $200.00.

Witness states in answer to the question if he is acquainted with southeast quarter of section eight, township three, range thirty-eight, West, situated in Dundy County, Nebraska, and was in 1894, and

know its value at that time and at the of stock in a corporation. C. P. Dewey continues to act as trustee in some of those things where A. B. Dewey is a large stock-holder. I do not remember, if I ever had any conversation, with C. P. Dewey during the years 1893 or 1894 relative to the condition of the First National Bank of Orleans, Nebraska.

F. E. F. E. ROBINSON, being first duly sworn, on oath, testified as follows:

My name is F. E. Robinson, I am 40 years of age and my residence is at Atwood in Rawlins County, Kansas. I have been a resident of the City of Atwood of Rawlins County, Kansas, at all times during the fifteen years just last past. I am now engaged in the land business and have been engaged in that business at all times during the fifteen years. My business consists of the buying and selling and handling of real estate generally in Rawlins County as well as in other counties and states. I am familiar with the northeast quarter of section thirty in township four, South of range thirty one West of the sixth principal Meridian in Rawlins County, Kansas, and know the value of that tract of land. I am also familiar with and know the value of all other similar lands in the vicinity of that tract and I have been familiar with and know the value of the said northeast quarter of section thirty in township four south of range thirtyone west of the sixth principal meridian, in Rawlins County, Kansas, at all times during the last fifteen years, and that during all of that time I have also known the value of that tract of land, and also all other similar tracts of land in the vicinity of that tract. At all times during the month of December 1894, I was familiar with and knew the value of the said northeast quarter of section thirty, in township four, south of range thirty-one West, of the Sixth Principal Meridian in Rawlins County, Kansas, as well as all other similar lands in the vicinity of that tract. The value of said Northeast quarter of section thirty in Township four, south of range thirty-one West of the Sixth Principal Meridian in Rawlins County, Kansas, was at all times during the said month of December 1894, Three Hundred Dollars.

Present time that he was acquainted with in 1894 and is at the present time, and that its value in 1894 was about $350.00 and at the present time about $175.00. Witness states he finds a deed from the sheriff of Dundy County, Nebraska, after an examination of the records, made to C. P. Dewey, under date of November 12, 1892,

consideration $400.00, and also finds a deed from Charles Jouvenat to G. Van Herrick under date of February 11, 1899, consideration $2000.

R. S. HENDRICKS, being first duly sworn on oath, testified as follows: Testi... He...

My name is R. S. Hendricks, I am 45 years of age and reside at Atwood in Rawlins County, Kansas. I have resided at Atwood, Rawlins County, Kansas, since January, 1885. I am engaged in the land business and have been engaged in that business at all times since 1885. I am now and have at all time during the ten years just last passed been well acquainted with the northeast quarter of section thirty, township four, south, range thirty-one West, of the Sixth P. M. in Rawlins County, Kansas, as well as with other and similar lands in the vicinity of that tract. At all times during the month of December 1894, I was familiar with and knew the value of the said northeast quarter of section thirty, township four, South of Range Thirty-One West of the Sixth P. M. and am now familiar with and know the value thereof. The value of said Northeast quarter of section thirty in Township four, south of Range thirty-one West of the Sixth P. M. was at all times during the said month of December 1894, Three Hundred Dollars.

It is hereby stipulated that the deposit subject to check which stood on the books of the bank in the name of "Whitney E. S." or Whitney E. S. Treas. was on the 25th day of February 1896, transferred to D. A. McCullough, Treasurer, and the amount of the deposit at that time was $5,570.94. In other words it is agreed that the trial balance of the bank numbers 4 and 5 from which J. A. Randall made up the two lists put in evidence as to who were depositors in the bank in December 1894, and at the date the bank closed, show that the said deposits refer to deposits made respectively by said Whitney and McCullough while they were County Treasurers of Harlan County, Nebraska.

It is further stipulated that the complainant may have until May 15th 1902 in which to complete and close his testimony.

G. M. LAMBERTSON,
Solicitor for Complainant.
A. E. HARVEY,
Solicitor for Defendant.

Exhibit "A".

STIPULATION AND DEPOSITIONS.

IN THE CIRCUIT COURT OF THE UNITED STATES

for the Northern District of Illinois.

John W. McDonald, Receiver of the First National Bank of Orleans, Nebraska, *Plaintiff*,
—vs—
Charles P. Dewey, *et. al.*, *Defendant*.
} Stipulation.

It is hereby stipulated and agreed by and between the plaintiff and the defendants, represented by A. E. Harvey, and Col. R. S. Thompson, that all parties waive the formal notice of taking testimony and hereby stipulate and agree that the testimony of D. A. McCullough and H. J. Whitmore, may be taken at this time and read in evidence, notwithstanding that fact that no notice has been served and the time for taking testimony has expired under the equity rules, and that this testimony shall have the same force and effect as though it were regularly taken under notice, within the rules.

It is hereby stipulated that the following is a list of the claims allowed by the receiver against the First National Bank of Orleans, Nebraska, that were in existence or outstanding at or prior to the sale of C. P. Dewey's stock and still remained as debts or claims against the bank at the time of its failure, and certificates issued therefor, subject to the reservations hereafter made by the respondent.

Harlan County, Nebraska, $4,429.72 and court costs taxed at $29. Caroline Galbraith $1052.50 on certificate of deposit #15059. Dora L. McKinney $815. with interest at the rate of six per cent per annum from the 11th day of May 1896, C. P. Dewey two claims of $1295.33 each, on two certificates of deposit numbered 14551 and 14552, under date of Dec. 7, 1893.

A. B. Dewey three claims allowed against the estate and certificates issued therefor respectively: $490.32, and two certificates issued respectively for $1188.67 each. Also one certificate issued to A. B. Dewey for $74.50.

It is agreed that Ida Carmichael had a certificate of deposit dated October 1, 1894, for the sum of $100. A new certificate was issued October 30, 1896, for $200.32 and the $100 certificate cancelled. That it never went below $100 and at the failure of the bank was $219.84. That a certificate of deposit was issued to Caroline Gal-

Smith for $1000 July 5, 1894, prior to the time C. P. Dewey disposed of his stock, and that that certificate has never been paid, except by the issuance of a renewal certificate July 5, 1895, and another renewal certificate July 5, 1896.

That prior to the date that C. P. Dewey sold his stock a certificate of deposit was issued May 10, 1894, for $725.40 to Dora L. McKinney by the First National Bank of Orleans and renewed May 10, 1895, for $768.72 and again renewed May 12, 1896 for $815.00. That that certificate or renewals of it was outstanding at the time the bank failed, and that the original certificate had never been paid except by renewal certificates issued as above.

That at and prior to the date that C. P. Dewey sold his stock in the First National Bank of Orleans, Nebraska, Harlan County, had on deposit in said bank in an open account subject to check, in the name of its treasurer, C. S. Whitney, the sum of $4275.32. That thereafter, to-wit: on November 2 and 14th, 1895, said deposit had reached the sum of $10,318.43. That said account never went below $4,004.67 between the dates of the sale of C. P. Dewey's stock and the failure of the bank to-wit: May 21, 1897.

The respondent reserves the right to prove that on the 26th day of February 1896, said indebtedness of said bank to the county of Harlan was paid in full in cash to the county board of Harlan County, and immediately re-deposited with said bank; which complainant denies.

E. E. Prussing & F. M. Hall,
For Plff.

A. E. Harvey,
For C. P. Dewey, Respondent.

D. A. McCULLOUGH, being first duly sworn, testified on behalf of the respondent:

My name is David A. McCullough, residence, Alma, Nebraska, Harlan County. I am at present a member of the Nebraska Legislature from Harlan County. I was county treasurer of Harlan County during the years 1896, 1897, 1898, and 1899. I succeeded Ezra S. Whitney in office. Witness states, in answer to the question asked him, that he presumed that Whitney turned over all of the county funds when he went out of office.

Q. What knowledge do you have in regard to the payment over to the County by Whitney of the amount of money which was deposited with the First National Bank of Orleans? The money was

of D. Hough.

paid direct to me, paid in currency and gold and silver. The amount was close to $9000, but I would not be positive about the amount.

In answer to the question as to the circumstances connected with the entry of deposit by witness of $5570.94 on the 25th day of February 1896, witness states he re-deposited it, only what he received, which was given him by the outgoing treasurer. The settlement was made at Mr. Whitney's house in Alma, Harlan County, Nebraska, the date I do not remember, but on that day Mr. Whitney turned over to me whatever the balance was.

The deposit with the First National Bank of Orleans was delivered to me after I went into office, not at the time, on account of some trouble with Mr. Whitney being short on his accounts some way or other and that held him back a little while. I objected and refused to accept checks from the outgoing county treasurer for deposits, instead of cash for the Harlan County deposit at the First National Bank of Orleans, as well as others.

I insisted that all deposits with banks should be paid me in cash and they were all so paid.

Cross-Examination by Mr. Hall.

In answer to the question as to who was present at Mr. Whitney's house in Alma when this settlement was made witness states that Mr. and Mrs. Whitney and George Burton and Francis Burton and witness were present. It was about eight o'clock in the evening. George Burton and Francis Burton were there so that the bank would be represented and Miss Burton was an officer in the bank, and Mr. Whitney had to put up the money out of the bank. Burton turned it over to Whitney, as Burton was the president of the bank, and I supposed he had to pay Whitney before Whitney could pay me as it was county funds, or I supposed it was county funds he was turning over. I deposited the money so turned over in the bank by giving it back to Burton that night. It was understood before the money was turned over to me that I was to turn it back to Mr. Burton as a deposit of the county. I don't know whether that money came out of the bank or not and do not know whether it went back into the bank. I saw the president of the bank hand it to Whitney and Whitney handed it to me. There was nothing said about why the money was turned over to Whitney, all that happened was that Burton turned over about five thousand dollars to Whitney and then Whitney turned it over to me, and I handed it right back to Mr. Burton right there at Mr. Whitney's house. There were no checks passed it was counted right out in cash on the table before the amount was paid;

the money was all counted out at one time; there were some unbroken packages that I might have taken their word for as to the amount of money they contained. There was quite a little of it in unbroken packages but as to the amount I could not say because some of it was gold, and we had a sack of silver that we did not count, at least, I think it was silver, coin of some kind. I do not know whom Burton was acting for, all I know is that Burton handed over this amount of money to Mr. Whitney and Mr. Whitney handed it over to me; that was the first negotiation I had had relative to this county deposit, only that I think in talking with Mr. Whitney in regard to it he was to have come down there the day before or perhaps the same day he came down. I had to agree to put this money into the bank before I could get it back from Mr. Whitney.

Depo... A. ...

Re-direct Examination by Mr. Harvey.

In answer to the question as to whether this payment by Mr. Whitney was not as a matter of fact made in discharge of so much of his liability toward Harlan County as was deposited in the First National Bank of Orleans witness answers it was, and that the entire amount of the deposit of Harlan County in the First National Bank of Orleans was paid over to me there at one time, so that the entire amount, in actual cash, was there. I do not know how much of the money belonged to Mr. Burton and how much belonged to Mr. Whitney. Mr. Whitney, to my knowledge, had never been a banker or interested in a bank. I do not know that the First National Bank of Orleans, Nebraska did not have at that time $5000 in cash, in fact, I didn't care where they got it, so they paid it over. It was very easy to get money at that time, but I do not know whether the money belonged to the First National Bank of Orleans or whether it was Whitney's or whose it was. After I re-deposited this money it was county money but whether the money that was deposited in the First National Bank of Orleans to Whitney's credit as treasurer was county money I could not say. The reason I would not take Whitney's check on the bank was because just at that time they began to get scarry of the banks and I was afraid of the bank. I put the money back into the bank because the county board approved the bond and accepted it and advised me to do it.

In answer to the question as to if it was not a fact that they could not get it out of the bank when it stood there in Witney's name unless they would agree to put it back in your name witness states that is as near the truth as you can get at it. The Board told me they would approve the bond and I was to get the money out just as soon

of D. lough.

as I could and in any way that I could, but I was never able to get out only a part of it.

Q. You didn't get any of that? A. I got some. I don't know whether it was that. I was treasurer at the time the bank failed. Harlan County had in the bank at that time a little over $4000. We cut down the original amount quite a little, I think we were able to get out about $1500.

Re-re-direct Examination by Mr. Harvey.

When Mr. Whitney turned that cash over to me as the incoming county treasurer it was the payment of the amount of the Harlan County deposit with the First National Bank of Orleans, and I was advised by the county authorities to get this money out of the First National Bank of Orleans and then, if necessary, re-deposit it, by the county authorities I mean the county board; they had approved the bond, accepted it and said it was all right.

Re-re-Cross Examination by Mr. Hall.

Q. You say that some of this money you didn't count that that was in packages? A. I counted it well enough so that I could see that it was all there in packages; not exactly to a cent, and as soon as I had counted it I left it there on the table. Mr. Burton was right by me while I was counting the money.

Q. Under the arrangement you did not consider that you had any right to take that money and carry it off with you? A. No I did not expect to carry it away. I supposed it was turned over as county money and I re-deposited it as such. Under the previous arrangement by which I was to get possession of the money I did not expect to carry it away, and in fact, on account of said previous arrangement I had no right to take it away.

Further Re-direct.

Q. You knew you had a legal right to do anything you desired to with it? A. Yes sir. It was only in respect to carrying out an understanding with Mr. Whitney and Mr. Burton, which I had with them, Mr. Burton didn't expect me to carry the money away and I didn't expect to carry it away.

Further Re-cross.

In answer to the question witness states that the money was not turned over to him with the understanding that he was to retain it or carry it away, or to retain it personally as money in his custody.

Further Re-direct.

Q. It was turned over to you in discharge of Mr. Whitney's obligation to the county for that much money, was it not? A. Yes sir, it was, and it was discharged to that extent.

CHAS. P. DEWEY, being duly sworn, testifies as follows:

I am defendant in this action; was present on the 25th day of April 1902, at the taking of deposition of Albert B. Dewey at Room 505 Monadnock Block in the City of Chicago, and heard his testimony given at that time; heard him testify that in January or February 1893, he had a conversation with me relative to the stock he and I owned in the First National Bank of Orleans, Nebraska; and heard him testify to the effect that after consulting together at that time decided that the First National Bank of Orleans, Nebraska, was in a shaky or dangerous condition, and that we decided we had better get rid of our stock, and that he had consulted an attorney, one E. F. Runyan, in respect to this stock, and to the law effecting stockholders of stock in National Banks, and that Runyan had advised him that he and I could evade all liability upon said stock by transferring the same to some other party or parties, and that Runyan had advised that we both do make such transfer.

As to the facts about the statements made by Mr. A. B. Dewey witness states that he never had any conversation with Mr. Runyan on the subject of the Bank Stock, and never counselled or advised with Mr. Runyan either in connection with A. B. Dewey or for himself individually, on the Bank Stock subject, and never requested A. B. Dewey to counsel with Mr. Runyan upon that subject, and never had any conversation with Mr. A. B. Dewey in reference to anything that Mr. Runyan had ever said to Mr. A. B. Dewey or had ever advised in the premises, and the first time that I ever knew or ever heard that A. B. Dewey had consulted with Mr. Runyan on the subject was when he gave in his evidence in April 1902.

Mr. A. B. Dewey and I in January or February 1893, never had

C. P. any conference relative to the weak or shaky or insolvent condition of the First National Bank of Orleans.

Q. In connection with the question just put, "state if you know the actual condition of the First National Bank of Orleans in the months of January and February 1893," I call your attention to the testimony of Mr. A. B. Dewey found on page 8 of his deposition in which the following question was put. "Q. Now what was there in the condition of the bank that occasioned you to consider and discuss this question of your double liability as a stockholder." A. Well it was the beginning of the tightness of the money market, and a number of banks failing, and being tied up, and the condition of the west, that were the injuries of all banks. "Q. What was the condition for instance, as to crops out in Harlan County, in and around Orleans, where the bank was situated in 1893 and 1894? A. They were pretty bad. Q. Had there been a failure of crops? A. 1893, 1894, and 1895, Yes sir." and witness is then asked if the statement that a number of banks had been failing and tied up in January and February 1893, made by A. B. Dewey is true, to which he replies that all the banks that he knew of were in a flourishing condition at that time. The First National Bank of Orleans, Nebraska, reported large deposits as well as large available cash resources. I had no reason at all to believe that the First National Bank of Orleans was in a shaky condition, but otherwise I believed them to be perfectly solid, and I had no reason to discuss the question of my double liability as a stock-holder with A. B. Dewey and in fact, did not do so.

In answer to the question as to why witness desired to transfer his stock to third parties for the purpose of avoiding a double liability witness states that he had no reason at all for so transferring his stock, He had transferred stock, and did so then and does now, as a matter of convenience, for the reason that he is often away from home and leaves these matters in such a shape so that they can be disposed of without his presence.

In answer to the question as to whether witness subsequent to January or February 1893 or Albert Dewey, ever deposited any money with the First National Bank of Orleans without security witness states that he loaned the Bank in August 1893 $5000.00 and took their bank certificate without collateral or other security; that subsequently he has loaned them other sums of money. I understood that A. B. Dewey did make some loans to them but I never learned so from him directly. Had I the least suspicion that the Bank was in an insolvent condition I should not have loaned them any money.

When I made the transfer to Jewett I made it upon my own de-

cision and not after an agreement between A. B. Dewey and me that we would both transfer our stock to avoid a liability, as I had none with him.

At the time of the re-transfer of said stock to me, about August 1893, from Jewett, I had no agreement or understanding or promise with A. B. Dewey to re-transfer the stock at all. It was done so entirely upon the agreement with Mr. Burton, the President of the Bank, to do so, and he stated that the information might get out that I had transferred my stock to other parties and it might work some injury to the Bank. Mr. Burton told me, at the time, that he had gotten A. B. Dewey's consent to re-transfer his stock also. I never learned this from A. B. Dewey himself. In May 1894, I again transferred the stock to Jewett but not in pursuance of an understanding or after a conference with A. B. Dewey, but merely upon my own decision to do so and to carry out my former plans for the sake of convenience.

Q. I will call your attention to the testimony of A. B. Dewey found on page 8 of his deposition in which (referring to the conference supposed to have been held between you and him in January or February 1893) the following question was put. Q. Did you have more than one conversation with Mr. C. P. Dewey. A. I was in daily conversation with him, i, e, with his office. Talked over matters in which we were interested." Witness is asked as to facts in regard to this daily communication and talks between A. B. Dewey and himself and he states that they did not have daily communications, and in fact, little or no interviews except as pertained to the business of the old firm of C. P. Dewey and A. B. Dewey, and after the dissolution of C. P. and A. B. Dewey on May 1, 1891, there was very little business interviews, except through the clerks in his office and mine.

Q. If it is a fact that Mr. A. B. Dewey transferred his stock to Shufelt in February 1893, at about the same time that you transferred your stock to Jewett, how do you account for the coincidence? A. I can only account for it in this way; that there was a leak in the office as to my movements, and the transaction of my business.

Q. Please state how you expect that leak to have taken place? A. Mr. A. B. Dewey was nosing around generally. He was intimate with one of my clerks and, although at first was inclined to take him with him, at the time of the dissolution, yet he decided not to do so but took into his office as a book-keeper, his brother-in-law; but he was having almost daily communications with this particular clerk, Max Mauermann, and I know that he gleaned a good deal of information from this man as to my movements, as to what I was

C. P. doing generally. After sometime A. B. Dewey had a falling out with his brother-in-law and he then made some arrangements with Mr. Mauermann to go with him, and he has been with him ever since. Mr. Mauermann left my office in 1898, and from matters that have developed since that time, I know that he could not have gained the information in any other way except through this man Mauerman. Mr. Mauerman was my book-keeper and knew of all the transactions that took place in my office and, besides, he had access to the letter press book and, in fact, wrote most all of the letters himself, dictated by me.

Q. Please state what you know of a predilection upon the part of Mr. A. B. Dewey in the past, (since the termination of your partnership) to find out, if he could, what you were doing in respect to some business matters in which he was interested, in the same kind of a business, and to do whatever you did? A. During our partnership, which existed for twelve years, I had charge of the business and was in the office constantly. He frequently, during sometime of the year, was absent, and was from home on trips and would come home to find that everything was going along satisfactorily, and in that way I perhaps got a better knowledge of the business than he, although he would look over the statements and examine the condition of affairs every time he did come home, and was always satisfied and seemed contented to leave everything with me. At the time of our dissolution he was required to give more of his personal attention and time to his own business and I suppose sometimes he was in doubt as to what to do, how to do, decide, and for this reason I think he was always "nosing around" to find out what was going on in my office. It always turned out that he got the information in some way and whatever I decided to do his decision would be made on about the same lines. The same thing was true of other business transactions besides the management of stock of the First National Bank.

Q. Show the Court what were the relations between you and Mr. Albert Dewey, and were you and he in friendly and daily consultation upon business matters during the years 1893, 1894, and 1895, as testified by A. B. Dewey, and when the final rupture took place and what was the cause of it. A. We were not at all friendly after March 1891. We had continued to do business together prior to that, twelve years, but during that time, and periodically, he would become very much upset about things in general, and I used to think it originated from a very bad temper. He would often do things very unbecoming a gentleman.

Q. Did he ever threaten you with personal violence. A. He did.

I think in March 1891, which was the beginning of the final rupture, when he bored his fists into my face and undertook to choke me. I resented it by pushing him aside, and I took some time to consider as to what I could do in the matter. I made up my mind, after several weeks deliberation, that he and I could not do business together any longer. I did not see much of him during the time although he would occasionally come into the office, but we would have no interview together. After deciding in my own mind that we must discontinue the partnership I spoke to him about it and we then decided to begin and wind up the business and divide our property, on and after May 1, 1891. From May 1, 1891, we did not have much intercourse at all, as the business was mainly done by the clerks in his office, as well as my own. Both of us owned, in our individual capacity, a number of shares of the stock of the Consumers Ice Company, of which he was president and I was treasurer. Matters did not go along very well and he seemed to be jealous of my rights, and orders I would give would often be countermanded by him. There was so much friction that the concern did not continue to be very well managed, and owing to a large judgment that had been obtained against the company prior to our taking hold, and in consideration of the exceedingly bad management, the company failed. Just a day prior to the assignment he sent his brother-in-law to me with the request to sign a check to pay his salary and office rent which had been standing for several months, and I refused to do so believing that all creditors should share alike. This added fuel to the flame and on that occasion he told my clerk, who went to his office on some business, that he would "put day-lights through me before the trouble was over." As a matter of fact there was no personal contact between Mr. A. B. Dewey and I.

Q. Referring to page 14 of A. B. Dewey's deposition, where he testified that you, in speaking of your ownership of the stock in the Orleans bank said, "he said we had better be damned." He said "we had better get out of the thing." Is that true that you said this? A. It is not.

"Q. Just state, as near as you can, the conversation, what you can remember of it. A. Well, Burton kept writing of the condition of the bank, that we should denationalize and that something had to be done, as the comptroller was after him constantly, so we concluded that it was best to transfer the stock." Now, referring to this testimony I will ask you whether Mr. Burton, either in 1893 or 1894 had ever discussed or proposed the question of denationalizing the bank. A. I think it was later that Mr. Burton talked of denationalizing the bank, and in 1893 and 1894 I never heard of the comptroller

C. P. being after him for any reason that the bank was needing attention. The reports from the officers of the bank always showed, during these years, that it was in good condition.

It is not a fact as testified on page 22 by Mr. Dewey in his testimony that we were on friendly terms and as far as I can recollect we did not consult with each other personally at that time. After our dissolution and after finding that I could not do business with him any longer, I fully made up my mind to let him attend to his own business and I would attend to mine, that I would give no advice to him on any subject, nor would I take any from him. There was little or no intercourse between us and only to fix up the business of our old firm and that was mainly done through our clerks.

Cross-Examination by Mr. Hall.

Q. You and Mr. A. B. Dewey did have some conversation occasionally, did you not. A. Very seldom. We had some but very few, during 1893 and some of 1894. The last conversation I had with A. B. Dewey was in the latter part of 1893 and part of 1894, fore part of 1894. Our clerks in our offices, Mr. A. B. Dewey's and in mine, were familiar with the facts as to the relation between myself and Mr. A. B. Dewey. Mr. Mauermann and M. Killen would know whether my brother and I had any intercourse.

Q. Do you mean to say that you never had any conversation with Mr. A. B. Dewey about this First National Bank of Orleans neither during 1893 or 1894? A. No, I do not say that I did not have any. I just said that I did positively. I did not discuss the condition of the bank in that conversation, I let Mr. A. B. Dewey do all the talking. I simply listened. He mainly did the talking. He talked to me very little during 1893 and 1894 about the condition of this bank, most of his conversation was directed through his clerks.

Q. When he did talk to you through 1893 and 1894, did he come to you or you go to him? A. I do not believe that I was ever in his office but once during the dissolution, and that was probably in 1891 or 1892. He probably came to my office in this conversation about the bank. He came occasionally during 1893 and 1894 but not frequently. I did not know that he had transferred his stock to the Shoefelts in February 1892, and I do not remember when I first learned of the fact, when I did it was only hearsay from the clerks, and of course, I was naturally interested to know how his transfer to Shoefelt and my transfer to Jewett happened to be on the same date. It was treated at the time as a sort of a coincidence.

Q. Were you much surprised to learn that those certificates of

stock (both yours and his) were not only signed on the same date but that they were cashed by the bank on the same date? A. I do not know as I knew of that, that they were cashed on the same date, and, in fact, I do not know as I knew that they were dated all the same, but merely that it was done at or about a certain time. Testim Dew

Q. If it should turn out in evidence that all of his certificates of stock that he held in the bank and all of your certificates of stock that were held in the bank, that the blank certificate on the back of these different shares of stock were all of them dated on the 26th day of January 1893, and that each one of these stock certificates had the words written across the face of it, "cancelled Feb. 8, 1893," would it not look like there was some concert of action between you? A. It would look like there was some treachery seems to me. If it was so that I cared nothing for it. It was something that he knew I had contemplated doing because at the time the stock was purchased I told him I did not care for it. At the time it was a transaction of his own. He went to Orleans himself. The firm of Burton & Harvey were owing the firm of C. P. and A. B. Dewey and it was proposed by Mr. Burton that they would sell to him and me a lot of their stock to straighten up their indebtedness, as they needed the money to pay off some other indebtedness, and when A. B. Dewey returned home I consented to make the purchase, and he took his stock in his name, and I took mine in my own name, and I told him at the time that I did not care for the stock but if it would accommodate Mr. Burton and Mr. Harvey I thought we could dispose of the stock some time, and I told him then, that I would transfer it to some one there who could exchange it. I was induced to have Jewett transfer the stock to me in September 1893 that I had transferred to him in February 1893 at the solicitation of Mr. Burton entirely. Mr. Burton seemed to be of the opinion that if it was known that I was no longer a stockholder that it would injure the standing of the bank. That was also about the same date that I put on record the deeds from Burton and Harvey to myself and A. B. Dewey that I had as security for what they owed me. My brother-in-law Mr. Hogg who lived in Cadiz, Ohio, was making a trip west as he owned some of the stock, twenty-nine shares, and I told him of Mr. Burton's solicitation in regard to the transfer of my stock and A. B. Dewey's stock, and he knew that the deeds we held were security for the bank as well as some large advances that A. B. Dewey and myself had been making subsequently to the purchase of this stock, and Mr. Hogg thought it was only fair and to make it a safer business transaction to put those deeds on record, and I went west with him, at his solicitation, and we visited Orleans and found they were in a healthy, prosperous

C. P. condition, so far as we could see. We talked with the cashier and we talked with Mr. Burton, the President, and Mr. Hogg told Mr. Burton what we thought of doing, and of course, Mr. Burton naturally objected to that. He thought that would hurt him, individually, as much as the recording of those deeds, and the knowledge and information that I had transferred my stock would hurt the bank, and he begged me not to do it but I gave him no satisfaction, and we left there and left Mr. Burton in doubt as to what we would do, after going away, Mr. Hogg said, "Now by all means record these deeds." Mr. Hogg was one of those suspicious down-easters who would not trust anybody. And I think it was for that reason as much as any other, that I put the deeds on record. He was interested to the extent that the deeds were given to secure A. B. Dewey and myself for advances that we had made Burton and Harvey, individually, and if there was any excess it went to the bank.

I believe the last friendly conversation I had with Mr. A. B. Dewey was prior to March 1891, that is to the best of my recollection. I say that we had some little conversation about some business matters that pertained to our old firm business and probably of the business of my father's estate. We were both executors, but I told you I thought the last part of 1893 or the first part of 1894. I do not think we had any conversation as late as the middle of 1894.

Q. I will ask you if you caused to be inserted in the Chicago Tribune, about December 7, 8, and 9, 1894, an advertisement "Wanted, some choice vacant city lots or blocks. Will give good bank stock, western farms and cash $1,000 to $20,000. Would assume reasonable incumbrance." A. I think perhaps I did as I was frequently advertising to exchange bank stocks as well as other stocks and western lands, and cash, for Chicago property, and probably some of this stock refrred to in the advertisement was the bank stock in the First National Bank of Orleans, and I did exchange some Orleans Bank stock subsequent to this advertisement for Chicago property, it was during 1894 in December and January 1895. I do not know whether I exchanged any other bank stock at that time for Chicago real estate but I did exchange some other stocks beside the bank stock. I do not remember whether I have exchanged any other bank stock for Chicago real estate since January 1895 or not.

Mr. Harvey Re-direct.

Q. Is it anything unusual or strange or extraordinary for anybody to advertise bank stock for exchange on real estate? A. Not at all. It is a very common thing to do so in big cities.

I did not advertise my stock for sale or trade for Chicago real estate because I believed it to be bad. I think I realized 10% premium from any shares of stock I exchanged. Testi... Dew...

In answer to the question as to whether witness signed his name to the advertisement witness states there never are names signed to advertisements.

Report of an Examination of the First National Bank, Orleans, Nebraska, made February 28, 1894, by J. M. Griffith, National Bank Examiner.

"Only two formal meetings are held by directors a year, and apparently they know little regarding the inside workings of the bank, and the management is left entirely to the officers. They have no active discount and examining committees and no report is on file.

"Annual meeting was held on proper date, 480 shares represented. Mr. John A. Randall acknowledges to me that of the amount he owes $1,000 of it was given in payment of the 10 shares of stock he owns, and is not qualified to act as a director.

"In my opinion this bank will never be able to do a prosperous business until the president and his associates pay up what they owe to the bank, and reloan the funds to outside parties, who will in return bring business to the bank. Mr. G. W. Burton I now learn induced Mr. C. P. Dewey and A. B. Dewey of Chicago to buy stock in this bank, and guaranteed all notes at face and interest, securing Mess. Deweys by turning over to them all the assets of the Interstate Trust Co. as a guarantee of fulfilling their part of agreement, so that I am informed by Cashier Randall that while there are "bad debts" and other past due paper in the bank on which will probably occur losses, yet the stockholders will not sustain any loss by reason of Burton & Harvey having to make good these losses, and the sooner the Deweys require Mr. Burton to do this, the better it will be for the bank's interest. The bank is far from being in a satisfactory condition to an examiner, yet from all I can ascertain depositors' interests are safe, as A. B. Dewey and C. P. Dewey are financially able and so situated that they would have to carry this bank through any trouble, but the bank ought to stand on its own bottom, by arranging its affairs to do so.

"So far as I am able to ascertain their directors know little of what is in this bank, and only two formal meetings have been held without going over matters in the bank, and no mention is made of their examining and approving loans. The Dundy Bros.' excess loan as noted above is for purchase of feed for cattle that parties are feeding, and cashier claims that they have mortgage on cattle as security. From year to year as this bank is examined there is so many of

C. P. continued and standing loans and either directly or indirectly are the outcome of the private business of firm of Burton & Harvey, the president of this bank, Mr. Geo. W. Burton, being a member of that firm, and the amount when totaled figures over half their capital stock paid in as follows: Interstate Loan & Trust Co. (incorporated), $5,000; Geo. W. Burton, president, $4,997.50; A. E. Harvey, $4,996.01; M. F. Burton (sister of president), $5,000; A. H. Burton (wife of president), $1,691.80; J. A. Randall (cashier), $2,900, two mtg. notes, $1,063.50; making in all $25,648.81, and really the bank has no security for these loans, but about a year ago, when Mr. A. B. and C. P. Dewey bought an interest in the bank, Burton & Harvey guaranteed all loans, and secured them by turning over about all assets of the Trust Co. Burton & Harvey are really sole owners of that Co. and it is apparent that notes are so arranged as to avoid showing an excess loan in violation of the law, and interest is paid regularly, and loans carried along, but in my opinion all these loans should be paid up, and funds loaned to customers who will bring business to the bank. Other loans seem proper and right, being mostly farmers' notes in small amounts.

"Of notes listed as 'bad debts' I am of the opinion they will lose some $2,800, and on other overdue paper there is a loss of some $5,000; yet on account of the Deweys having a guarantee from Burton & Harvey the stockholders will not lose a cent, but these notes are not in bankable shape as they now are, and they should be paid and taken out of this bank by Burton & Harvey, and funds loaned to other parties, and Vice-Prest. C. P. Dewey and Director A. B. Dewey ought to require this to be done, for as losses now show there is apparently a small impairment of capital."

1100 And afterwards to-wit: on the 28th day of January, 1903, in the December term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF JANUARY 28, 1903.

John W. McDonald, Receiver,
vs.
Charles P Dewey, *et al.* } 25141

Now come the parties by their solicitors and the hearing of this cause is resumed, and the same being concluded, and the Court not being sufficiently advised in the premises, takes time to consider, with leave to the counsel to file briefs.

1101 And on to-wit: the 30th day of April, 1903, in the December term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF APRIL 30, 1903.

John W. McDonald, as Receiver, etc.
vs.
Charles P. Dewey, *et al.* } 25141

Now come the parties by their solicitors, and further arguments are heard and concluded, and the Court being sufficiently advised in the premises, takes time to consider, with leave to the complainant to file briefs herein within twenty days, the defendants to file their reply brief within twenty days thereafter.

1102 And on to-wit: the 4th day of November, in the July term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

DECREE OF NOVEMBER 4, 1903.

John W. McDonald, Receiver of the First National Bank of Orleans, Nebraska,
vs.
Charles P. Dewey, Frederick L. Jewett, Jules W. Jouvenat, C. C. Hatcher, whose first name is unknown, Emile M. Jouvenat, A. C. Kendig, whose first name is unknown, William Mathison and Andrew K. Park, } 25141.

This cause coming on to be heard upon the bill of complaint the answer of Charles P. Dewey and Frederick L. Jewett, two of said defendants and replications thereto, oral and documentary, proofs, depositions, stipulations and a decree pro confesso against said William Mathison, Emile Jouvenat and A. C. Kendig, and the cause having been argued by counsel for complainant and Charles P. Dewey and Frederick L. Jewett respectively, and the Court being fully advised in the premises, doth Order, Adjudge, and decree as follows:

It appearing that the defendants, to-wit: William Mathison, Emile Jouvenat and A. C. Kendig were duly served with process in this case, and that on the 27th day of January, 1903, said defendants and each of them having failed to appear, plead, answer or demur, an order for a decree pro confesso was duly entered on said date,
1103 that more than thirty days have passed since the entry of said order; the court thereupon finds that there is due and owing to the complainant herein and from said defendants, William Mathison, Emile Jouvenat and A. C. Kendig the sum of twelve thousand eight hundred and twenty two and 60/100 Dollars ($12,822.60) together with interest thereon at the rate of five per cent per annum from date of this decree, It is therefore, Ordered, Adjudged and Decreed by the court that the said defendants, William Mathison, Emile Jouvenat and A. C. Kendig pay to the said John W. McDonald, receiver of the said First National Bank of Orleans, Nebraska, the sum of twelve thousand eight hundred and twenty two and 60/100 dollars, together with interest thereon from this date and the costs of this suit, taxed at the sum of three hundred eighteen and 89/100 dollars.

As to said defendants Charles P. Dewey and Frederick L. Jewett, the court further finds as follows:

The bill herein was filed against said Charles P. Dewey and per- Decree 1903
s to whom certain shares of capital stock of the First National nk of Orleans, Nebraska, formerly held by the said Charles P. wey, were transferred, to-wit: one hundred and five shares, to over the amount of an assessment of eighty six dollars per share de by the Comptroller on September 14, 1897, against the stock- lders of said First National Bank of Orleans, Nebraska, an in- vent corporation. The bank was organized in 1885 with a capital ck of fifty thousand dollars, represented by five hundred shares of ck of one hundred dollars each; that in October 1891, the said arles P. Dewey purchased one hundred and twenty shares of said ck; that in March and April 1892, he sold fifteen shares of said ck on which no claim is made against the said Charles P. Dewey Frederick L. Jewett in this action; that of the remaining one hun- dred and five shares of said stock sued for in this case the said 04 Charles P. Dewey sold and transferred eighty five shares in December, 1894, and the remainder on or about the 10th day January, 1895, that said sales were made to various parties ough the said Frederick L. Jewett, who acted merely as Charles Dewey's agent and held the stock in his name for the said Dewey; said Frederick L. Jewett having no interest in said stock; that said Charles P. Dewey had been vice president of the said bank m January, 1892, to January 1895, that the bank failed May th, 1897, about two years and five months after the sale by Dewey the stock in question; that P. O. Hedlund was appointed receiver said bank June 5, 1897, that subsequently thereto he resigned his sition as receiver and John W. McDonald, the complainant herein, s duly and regularly appointed receiver of said bank, and was and he receiver of said bank at this date.

The court further finds that the bank was insolvent in December 94, and January, 1895, at the time Dewey sold his one hundred d five shares of stock in question in this proceeding and that Dewey ew or ought to have known that fact; and that he cannot escape stock holders liability for debts of the bank owing at the time sold his stock and not discharged at the time of the bank's failure. The Court further finds that except as to the debts due from the nk over and above its valid assets no one was interested in Dewey's tives or acts with reference to his stock since no evidence has been roduced tending to show any fraud upon the creditors; that the bility sought here to be enforced against Dewey is simply that in- ed in his ownership of said stock, and that, being charged with owledge of the bank's insolvent condition, the sale and transfer of stock to some other party did not release him from the statutory

liability for the bank's then existing debts; the transfer was void as to creditors representing indebtedness of the bank then in
1105 existence, but not as to subsequently accruing indebtedness.

The court finds as to stock certificates No. 98 for five shares, No. 99 for ten shares and No. 102 for ten shares (being part of the 105 shares in controversy) that said certificates were issued to F. L. Jewett being part of the stock transferred from said C. P. Dewey to said Jewett, as his representative that said stock represented by said certificates was sold by said F. L. Jewett in December 1894 or January, 1895 and said certificates duly assigned with the usual power of attorney to transfer the same upon the books of the bank properly executed and delivered to the purchasers at the time of said sale.

The Court further finds that said certificates last above named were never transferred on the books of the bank and still stood in the name of the said F. L. Jewett at the date that the bank failed and went into the hands of the receiver.

The Court further finds that said defendant C. P. Dewey in January 1895, after the sale of all his stock in said bank, notified the president of the said bank by letter that he was no longer a stock holder in said bank and directing that his name as vice-president of said bank should be erased from the stationery of the bank, and again about a month later wrote a second letter to the president of the bank to the same effect and protesting to the further use of his name on the stationery of the bank.

The Court further finds in the absence of evidence or claim that any one was thereby misled into depositing in or trusting the said bank, that said Dewey cannot be held liable upon said stock for debts which accrued subsequent to the sale of his said stock.

1106 The Court further finds, as per stipulation filed herein, that the creditors of the bank in existence at the time Dewey sold the stock in question who still held claims again the bank at the time of its failure were as follows:

Harlan County, Nebraska	$4,429.72
Caroline Galbraith	$1,052.52
Dora L. McKinney	$ 815.15
C. P. Dewey	$2,590.66
A. B. Dewey	$2,942.16
Ida Carmichael	$ 100.00

The Court finds as to the above claim of Harlan County, Nebraska, for $4,429.72, that at the time Dewey sold the stock in question there was on deposit in said bank in the name of E. S. Whitney, Treasurer, $4,319.57, that afterwards, in May 1896, the balance of this account then on hand was paid over in cash to said County

Treasurer's successor in office, D. A. McCullogh, the new treasurer of the County, and by him re-deposited in said Bank, that this amount of $4,319.57 was added to and drawn from from time to time, the deposit reaching at one time over ten thousand dollars, and at one time receding to $4,004.67, the balance at the time of the failure of the bank being $4,429.72, it is claimed by said successor, D. A. McCullough, that the bank required him to redeposit the money in said bank before paying him the money. There is, however, no evidence to show that Charles P. Dewey had any knowledge whatever of this transaction The Court finds that as to this item there was such an absolute novation as to release Dewey. Decre 190

As to the above claims of Caroline Galbraith for $1,052.52, and Dora J. McKinney for $815.15, the court finds that these claims at the time of the bank's failure were for the identical amounts 1107 due them at the time Dewey sold the stock in question, with interest added thereto respectively; that these are just debts dating back to the period when Dewey was a stockholder; that they have never been paid; that the issuing by the bank of new certificates from time to time to include accrued interest is in no sense a novation and release of the original debt, and that they are entitled to the benefit of Dewey's stockholders' liability.

As to the above claim of Ida Carmichael on a certificate of deposit on which there was due at the time the bank failed the sum of $219.84, the court finds that at the time Dewey sold his stock there was due her on a certificate of deposit the sum of $100.00; that after Dewey sold his stock that certificate was surrendered and a new certificate issued for said $100.00 included with an additional amount placed by her with the said bank. The court finds that she is entitled to the benefit of Dewey's stockholder's liability as to said $100.00.

As to the above claim of A. B. Dewey on certain certificates of deposit amounting to $2,942.16, the court finds that said A. B. Dewey was a stock holder in said bank for an equal amount with said C. P. Dewey during the period that C. P. Dewey was a stockholder; that said A. B. Dewey was a director of said bank from January 1892, to January, 1895 that after C. P. Dewey had sold his stock said A. B. Dewey took from said bank certain assets of the bank as collateral security for said certificates of deposit held by him and on which certificates this claim is made; that no accounting has been made or shown in this case as to said assets so taken as collateral security to said certificates; that the receiver, complainant herein, has compromised with said A. B. Dewey as to his stock-holder's lia-

4. bility in the matter of said bank. The court finds as to this
1108 claim that the said Charles P. Dewey is not liable.

As to the above claim made on account of the certificates of the bank held by the defendant, C. P. Dewey, $2,590.66, the court finds there is no reason in the face of his opposition to collect from said Dewey to pay his own claim; and that this claim cannot be considered in arriving at a basis for determining the amount of said C. P. Dewey's stock-holder's liability.

The Court further finds that the said Charles P. Dewey is liable under his said stock-holder's liability to pay to the receiver, complainant herein, on the said one hundred and five shares of the capital stock of said The First National Bank of Orleans, Nebraska, his equal and ratable share of the said claims, to-wit:

On the claim of Caroline Galbraith for	$1,052.52
On the claim of Dora J. McKinney for	$ 815.15
On the claim of Ida Carmichael (on original certificate) for	$ 100.00
Being a total of said claims of	$1,967.67
together with interest thereon at the rate of seven per cent per annum from September 14, 1897, the date of the Comptroller's assessment on the stockholders of said bank, to this date, the sum of	820.23
Making a total of	$2,787.90

of which amount of $2,787.90 said Charles P. Dewey's ratable share of stock holder's liability is 105/500 or the sum of five hundred and eighty five dollars and forty eight cents ($585.48)

Now, therefore, on consideration thereof, It is ordered adjudged and decreed, and the Court doth hereby order, adjudge and decree as follows viz: That the said Charles P. Dewey, one of the de-
1109 fendants herein, as his equal and ratable share of the stock-holder's liability of the First National Bank of Orleans, Nebraska, pay to said John W. McDonald as receiver of said bank the sum of five hundred and eighty five dollars and forty eight cents ($585.48. and that in addition thereto said Charles P. Dewey pay as his just and equitable share of the costs of this proceeding the sum of ninety eight and 16/100 dollars in addition to the $220.73 heretofore paid by him for depositions.

And that as to Frederick L. Jewett, one of the defendants herein, said bill is dismissed.

10 And on to-wit: the 23rd day of November, 1903, came the complainant in said entitled cause by his solicitors and filed the clerk's office of said court in said entitled cause his certain tition for appeal in words and figures following to-wit:

PETITION FOR APPEAL.

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CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois.

ohn W. McDonald, Receiver of the First National Bank of Orleans, Nebraska *vs* harles P. Dewey, Frederick L. Jewett, Jules W. Jouvenat, C. C. Hatcher, whose first name is unknown, Emile M. Jouvenat A. C. Kendig, whose first name is unknown William Mathison and Andrew K. Park,	Petition on Appeal.

The above named complainant, John W. McDonald, receiver of he First National Bank of Orleans, Nebraska, conceiving himself ggrieved by the decree made and entered on the 4th day of No-ember, 1903, in the above entitled cause, does hereby appeal from aid order, judgment and decree to the United States Circuit Court f Appeals for the Seventh Circuit, for the reasons specified in the ssignment of errors which is filed herewith, and he prays that this ppeal may be allowed, and that a transcipt of the record, proceed-ngs and papers upon which said order was made, duly authenticated nay be sent to the United States Circuit Court of Appeals for the eventh Circuit.

Dated this 23rd day of November, 1903.

F. M. HALL, &
PRUSSING, BROWN & KING,
Counsel.

The foregoing claim of appeal is allowed and the petition granted. Dated this 23 day of Nov., 1903. Bond of $500.

KOHLSAAT,
Circuit Judge.

(Endorsed) Filed Nov., 23, 1903, Marshall E. Sampsell, Clerk.

1111 And on the same day to-wit: the 23rd day of November, 1903, came the complainant in said entitled cause by his solicitor and filed in the clerk's office of said court his certain assignment of errors in words and figures following to-wit:

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ASSIGNMENT OF ERRORS.

CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois.

John W. McDonald, Receiver of the First National Bank of Orleans, Nebraska, *Complainant*, *vs* Charles P. Dewey, Frederick L. Jewett, Jules W. Jouvenat, C. C. Hatcher, whose first name is unknown, Emile M. Jouvenat, A. C. Kendig whose first name is unknown, William Mathison and Andrew K. Park, *respondents*.	Assignment of Error on Appeal.

And now, on this 23rd day of November, 1903, comes the said complainant, John W. McDonald, receiver of the First National Bank of Orleans, Nebraska, and says that the decree in said cause heretofore entered on the 4th day of November, 1903, is erroneous, and against the just rights of the complainant, for the following reasons:

1112 1st: The court erred in holding and deciding that Charles P. Dewey was only liable as a stockholder of the First National Bank of Orleans, Nebraska, for the debts and liabilities of said bank that were in existence at the date of the sale of his stock and which said debts were still in existence at the time said bank failed and went into the hands of a receiver.

2nd. The Court erred in refusing to enter a judgment in favor of said complainant and against the defendant, Charles P. Dewey for the full amount of the assessment made on the stock of the said bank by the Comptroller of the Currency, to-wit: for the sum of eighty-six dollars per share.

3rd: That after the court had found that the bank was insolvent in December, 1894 and January 1895, the date Dewey sold his one hundred and five shares of stock in question in this proceeding, and

hat Dewey knew, or ought to have known, that fact he should have ntered a judgment or decree in favor of complainant and against he said Charles P. Dewey for the full amount of the assessment pon the stock of the bank on the said one hundred and five shares f said stock owned by the said Charles P. Dewey. Assignment of errors 23, 1

4th. The Court erred in holding that the said Charles P. Dewey vas not liable for said assessment on stock certificates Number 98 for ive shares, 99 for ten shares, and 102 for ten shares; it appearing hat said stock still stood on the books of said bank in the name of Frederick L. Jewett as the agent and representative of Charles P. Dewey at the time the bank failed and went into the hands of a re-eiver.

5th. The Court erred in not rendering a judgment against the said Charles P. Dewey for $86 per share, being the amount of the Comptroller's assessment on the said twenty five shares of
1113 stock that still stood on the books of the bank in the name of the said F. L. Jewett as his agent or representative at the time the bank failed and went into the hands of a receiver.

6th: The Court erred in excluding the claim of Harlan County Nebraska against said First National Bank of Orleans, Nebraska, for the sum of four thousand four hundred twenty nine and 72/100 dollars as one of the claims that the bank owed at the time Charles P. Dewey sold his stock, and which was still in existence at the date the bank failed and went into the hands of a receiver.

7th: The Court erred in excluding from the list of claims on which Charles P. Dewey was liable the said claim of Charles P. Dewey against said bank for the sum of two thousand five hundred and ninety and 66/100 dollars.

8th: The Court erred in excluding from his consideration in fixing the amount of Charles P. Dewey's liability the claim of A. B. Dewey against said bank for the sum of two thousand nine hundred forty two and 16/100 dollars.

9th: The court erred in holding and deciding that the said Charles P. Dewey was only liable for 105/500 of the amount of said claims, amounting to the sum of one thousand nine hundred sixty-seven and 67/100 dollars, with an interest charge added of eight hundred twenty and 23/100 dollars, making the total amount of claim owing by the bank at the date of the sale by Charles P. Dewey of his said stock, which said claims were still owing at the time the bank failed, the sum of two thousand seven hundred eighty-eight dollars. There should have been included in said sum
1114 the claim of Charles P. Dewey for two thousand nine hundred and nine and 66/100 dollars, and of A. B. Dewey for two thousand nine hundred and forty-two and 16/100 dollars, and

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of Harlan County, Nebraska, for four thousand four hundred twenty-nine and 72/100 dollars, and the court should have rendered a judgment in favor of complainant and against the said Charles P. Dewey for the full, just and true sum of the aggregate amount of these claims, to-wit: the sum of eleven thousand nine hundred thirty and 21/100 dollars.

10th. The court erred in excluding from the list of indebtedness owing by the bank at the time Dewey sold his stock and which said debts were still in existence at the date the bank failed, the said three claims, to-wit: that of Harlan County, Nebraska, for four thousand four hundred and twenty nine and 72/100 dollars, of Charles P. Dewey for two thousand five hundred and ninety and 66/100 dollars and of A. B. Dewey for two thousand nine hundred forty two and 16/100 dollars. It was error for the court to hold that the claim of A. B. Dewey against said bank should not be considered or treated as one of the claims owing by the bank at the time Charles P. Dewey sold his stock still outstanding at the date of the failure of the bank because A. B. Dewey had taken from said bank certain assets concerning which no accounting had ever been had, and because the receiver had compromised A. B. Dewey's stock liability, since there was no issue of this kind in the pleadings and no defense of this character plead in the defendant's answer. Said finding of fact is entirely outside of the issues of the case.

1115 Wherefore, the said complainant prays that said decree be reversed and that the said court may be directed to enter a decree in accordance with the prayer of the bill of complaint.

F. M. Hall, &
Prussing, Brown & King,
Attorneys for Complainant.

(Endorsed) Filed Nov., 23, 1903, Marshall E. Sampsell, Clerk.

1116 And on to-wit: the 23rd day of November, in the July term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF NOVEMBER 23, 1903

Order 1903 appe

John W. McDonald, Receiver of the First National Bank of Orleans Nebraska,
vs
Charles P. Dewey, *et al.* } 25141

Now again comes the complainant by his solicitor and upon filing petition for appeal, together with assignments of error, It is Ordered that an appeal be and is hereby allowed to the United States Circuit Court of Appeals for the Seventh Circuit from the decree entered on the 4th day of November, 1903,, that the amount of the bond upon said appeal be and hereby is fixed at the sum of five hundred dollars, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals.

1117 And afterwards towit: on the 30th day of November, in the July term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit: Order 190 bon

John W. McDonald, Receiver of the First National Bank of Orleans Nebraska,
vs
Charles P. Dewey, *et al.* } 25141

Now again comes the complainant by his solicitor and presents the Bond on appeal in the sum of five hundred dollars, which said Bond is approved and ordered to be filed.

1118 And on to-wit: the 30th day of November, 1903 there was filed in the clerk's office of said Court in said entitled cause a certain Bond of Appeal in words and figures following to-wit: Bond file 190

1119 Know all Men by these Presents, That we, John W. McDonald, Receiver of the First National Bank of Orleans, Nebraska, as principal, and H. S. Freeman, as sureties, are held and firmly bound unto Charles P. Dewey, in the full and just sum of Five hundred dollars, to be paid to the said Charles P. Dewey, his certain attorney, executors, administrators, or assigns; to which payment,

Appeal Bond. well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 24th day of November in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a session of the United States Circuit Court for the Seventh Circuit, in a suit depending in said Court, between John W. McDonald, receiver of the First National Bank of Orleans, Nebraska against Charles P. Dewey, et al. a Decree was rendered against the said Charles P. Dewey for the sum of $585.48 and the said John W. McDonald, Receiver having obtained writ of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Charles P. Dewey citing and admonishing him to be and appear at at United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within ..... days from the date hereof.

Now, the condition of the above obligation is such, That if the said John W. McDonald, Receiver, shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN W. McDONALD, [SEAL]
Receiver First National
Bank Orleans, Nebraska.
H. S. FREEMAN. [SEAL]

Sealed and delivered
in presence of—
F. M. HALL,
C. C. MORLAY,
Approved No., 30, /03.
KOHLSAAT, *J.*,
Security satisfactory,
R. S. THOMPSON,
Atty., for C. P. Dewey.

(Endorsed) Filed Nov., 30, 1903, Marshall E. Sampsell, Clerk.

1120 And on to-wit the 21st day of December being one of the days of the regular December term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF DECEMBER 21, 1903,

Order 190 tim cri

Extending time to file Transcript of Record in Circuit Court of Appeals.

John W. McDonald, Receiver of The First National Bank of Orleans, Nebraska,
vs.
Charles P. Dewey, *et al.* } 25141

By agreement of counsel, It is hereby Ordered that the time to file Transcript of record in the Circuit Court of Appeals be and the same is hereby extended to January 5, 1904.

1121 IN THE CIRCUIT COURT OF THE UNITED STATES Prae cri 30,

in and for the Northern District of Illinois—

Northern Division.

John W. McDonald, Receiver of The First National Bank of Orleans, Nebraska,
vs.
Charles P. Dewey, *et al.* } 25141

To the Clerk of the above entitled Court:—

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Seventh Judicial Circuit, under the appeal heretofore perfected to said Court and include in the said transcript the following pleadings, proceedings and papers on file to-wit:

Bill of Complaint filed April 21, 1899,
Subpoena and returned thereon endorsed,
Appearance of C. P. Dewey and F. L. Jewett, filed June 5, 1899,
Stipulation filed June 5, 1899,
Stipulation filed June 26, 1899,
Answer of Charles P. Dewey filed July 14, 1899,
Answer of F. L. Jewett filed July 14, 1899,
Order of May 1, 1901,
Replication filed May 6, 1901,
Stipulation filed May 14, 1901,

trans- Dec.

Order of May 14, 1901,
Consent to Substitute Parties filed June 6, 1901,
Affidavit of John W. McDonald filed June 6, 1901,
Order of June 6, 1901,
1122 Alias Subpoena issued August 2, 1901, together with the marshal's return thereon endorsed.
Order of August 29, 1901,
Order of January 7, 1902,
Replication filed Jany 27, 1903,
Order of January 27, 1903,
Depositions of John W. McDonald, et al filed Sept 30, 1901,
Together with the Exhibits thereto attached,
Depositions of P. O. Hedlund and A. E. Harvey, together with Exhibits thereto attached, filed Sept., 30, 1901
Depositions of F. S. Eberhart, Levi Eberhart et al filed May 1, 1902
Deposition of Max J. Mauermann, Filed October 10, 1902,
Deposition of Frank Isreal, Filed April 30, 1903,
Depositions of F. E. Robinson and R. S. Hendricks, filed April 30, 1903.
Deposition of W. S. Morlan, filed April 30, 1903,
Deposition of Miss M. F. Burton, C. T. Simpson and M. B. Holland, Filed October 9, 1901,
Deposition of Charles P. Dewey, Charles T. Killen, Charles Jouvenat, Elisha T. Davis and Charles H. Killough, filed October 14, 1902.
Deposition of Frederick L. Jewett and Exhibits thereto attached,
Deposition of D. A. McCullough and Stipulation thereto attached, Filed April 30, 1903.
Depositions of S. D. Lane and Edgar L. Means, filed March 31, 1902,
Deposition of Chas. P. Dewey filed October 14, 1902,
Depositions of Charles M. Hogg and John A. Randall filed Dec., 21, 1903, as of April 30, 1903,
1123 Order of Jany., 28, 1903
Order of April 30, 1903.
Decree of November 4, 1903,
Petition for Appeal,
Assignment of Errors,
Order of November 23, 1903, allowing appeal.
Order of November 30, 1903, approving Bond,
Bond on appeal filed November 30, 1903,

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit and on file in the office of the clerk of the said Circuit Court of Appeals at Chicago, before January 6, 1904. Praec crip 30,

F. M. Hall and
Prussing, Brown & King,
Solicitors for Appellant.

(Endorsed) Filed Dec 30, 1903 Marshall E Sampsell Clerk

1124 Northern District of Illinois, } ss.
Northern Division, }

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court and made in accordance with Praecipe filed in the cause entitled John W. McDonald, receiver of the First National Bank of Orleans, Nebraska, complainant, vs. Charles P. Dewey, Frederick L. Jewett, Jules W. Jouvenat, C. C. Hatcher, whose first name is unknown, Emile M. Jouvenat, A. C. Kendig, whose first name is unknown, William Mathison and Andrew K. Park, defendants, as the same appear from the original records and files of said court now remaining in my custody and control. Cert to re fil

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 31st day of December, 1903.

Marshall E. Sampsell,
[seal] *Clerk.*

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages numbered from 1 to 287, inclusive, is a copy of the printed record filed in this court on the twelfth day of March, 1904, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this court, and upon which the cause was determined by the United States circuit court of appeals for the seventh circuit, in the case of John W. McDonald, receiver of the First National Bank of Orleans, Nebraska, *vs.* Charles P. Dewey, *et al.*, No. 1054, October term, 1903.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this twenty-seventh day of February, one thousand nine hundred and five.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States *circuit court of appeals for the seventh circuit, begun and held at the United States* court rooms, in the city of Chicago in said seventh circuit, on the sixth day of October, 1903, of the October term in the year of our Lord one thousand nine hundred and three and of our Independence the one hundred and twenty-eighth.

And afterwards, to-wit: on the seventh day of January, 1904, in the October term last aforesaid, came the appellant, by his counsel, Mr. Eugene E. Prussing and Mr. F. M. Hall, and filed in the office of the clerk of this court their appearance, which appearance is in the words and figures following to-wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1903.

JOHN W. MCDONALD, Receiver, etc., Appellant,
vs.
CHARLES P. DEWEY ET AL., Appellees. } No. 1054.

The clerk will enter *my* appearance as counsel for the appellant.

E. E. PRUSSING AND
F. M. HALL.

Indorsed: Filed Jan. 7, 1904. Edward M. Holloway, clerk.

COPY BOUND CLOSE IN CENTER

d afterwards, on the same day, to-wit: on the seventh day of ary, 1904, in the October term last aforesaid, came the appellees, eir counsel, Mr. Andrew E. Harvey and Mr. R. S. Thompson, led in the office of the clerk of this court their appearance, appearance is in the words and figures following, to-wit:

d States Circuit Court of Appeals for the Seventh Circuit, October Term, 1903.

OHN W. McDONALD, Receiver, etc., Appellant,
vs.
CHARLES P. DEWEY ET AL., Appellees. } No. 1054.

clerk will enter *my* appearance as counsel for the appellees Dewey and F. L. Jewett.

ANDREW E. HARVEY.
R. S. THOMPSON.

orsed: Filed Jan. 7, 1904. Edward M. Holloway, clerk.

afterwards, to-wit: on the twenty-sixth day of January, 1904, October term last aforesaid, there was filed in the office of the f this court a stipulation of counsel, which stipulation is in the and figures following, to-wit:

D STATES OF AMERICA,
nth Judicial Circuit, } *ss.:*

United States Circuit Court of Appeals in and for said Circuit.

McDONALD
vs.
DEWEY.

from the Circuit Court of the Northern District of Illinois.

stipulated and agreed by and between the parties to said at appellant's counsel may have leave to withdraw the record for ten days.

ay, January 25, 1904.

F. M. HALL AND
E. E. PRUSSING,
Attorney- for Appellant.
A. E. HARVEY AND
R. S. THOMPSON,
Attorney- for Appellees.

sed: Filed Jan. 26, 1904. Edward M. Holloway, clerk.

And afterwards, on the same day, to-wit: on the twenty-sixth day of January, 1904, the following further proceedings were had and entered of record, to-wit:

TUESDAY, January 26, 1904.

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge presiding. Hon. Peter S. Grosscup, circuit judge. Hon. Francis E. Baker, circuit judge.

JOHN W. McDONALD, Receiver of the First National Bank of Orleans, Nebraska,
vs.
CHARLES P. DEWEY.

1054. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Upon filing of stipulation of counsel and upon motion of counsel for appellant, it is ordered that the transcript of the record in this cause may be withdrawn by counsel, and it is further ordered that the said transcript be returned to the files of this court within ten days from this date.

And afterwards, to-wit: on the twelfth day of April, 1904, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation of counsel, which stipulation is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

JOHN W. McDONALD, Receiver of the First National Bank of Orleans, Nebraska, Appellant,
vs.
CHARLES P. DEWEY, FREDERICK L. JEWETT, ET AL., Appellees.

Stipulation.

It is hereby stipulated that this case shall be passed for argument to some day between the 1st and 15th of June, if agreeable to the court. If the court will not hear this case at so late a date as this then it is stipulated that the case shall be set down for trial at the latest date that the court will hear it.

E. E. PRUSSING,
F. M. HALL, For Comp.
R. S. THOMPSON,
A. E. HARVEY,
For Respondent.
By HARVEY.

Indorsed: Filed Apr. 12, 1904. Edward M. Holloway, clerk.

terwards, on the same day, to-wit: on the twelfth day of 04, in the October term last aforesaid, the following further gs were had and entered of record, to-wit:

TUESDAY, April 12, 1904.

net pursuant to adjournment.
: Hon. James G. Jenkins, circuit judge presiding. Hon. Grosscup, circuit judge. Hon. Francis E. Baker, circuit

McDONALD, Receiver of st National Bank of Or- Nebraska,
vs.
ES P. DEWEY ET AL.

1054. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

lered by the court that this cause be, and the same is hereby for hearing May 10, 1904.

terwards, to-wit: on the tenth day of May, 1904, in the Oc- n last aforesaid, the following further proceedings were had ed of record, to-wit:

TUESDAY, May 10, 1904.

net pursuant to adjournment.
: Hon. James G. Jenkins, circuit judge presiding. Hon. Grosscup, circuit judge. Hon. Francis E. Baker, circuit

McDONALD, Receiver of st National Bank of Or- Nebraska,
vs.
ES P. DEWEY ET AL.

1054. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

is day come the parties by their counsel and this cause now to be heard on the printed record and briefs of counsel, and rgument by Mr. F. M. Hall and Mr. E. E. Prussing, coun- pellant, and by Mr. A. E. Harvey and Mr. R. S. Thompson, r appellees, and the court having heard the same takes this der advisement.

terwards, to-wit: on the twenty-eighth day of May, 1904, in er term last aforesaid, there was filed in the office of the is court a stipulation of counsel, which stipulation is in the l figures following to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1903.

JOHN W. McDONALD, Receiver, Appellant,
vs.
CHARLES P. DEWEY ET AL., Appellees.

It is hereby stipulated and agreed by and between the parties hereto by their respective counsel that appellant may file herein instanter printed copies of the reply argument of Mr. Eugene E. Prussing for appellant made on May 10, 1904, upon the hearing of above entitled cause, together with authorities cited, and appearing on pages 3, 4, 5, 6 and 7 of said printed argument; and that within two weeks after filing of printed copies of said argument, appellees may file authorities in reply to the cases therein cited by appellant.

EUGENE E. PRUSSING AND
F. M. HALL,
Solicitors for Appellant.
A. E. HARVEY AND
R. S. THOMPSON,
Solicitors for Appellees.

Indorsed: Filed May 28, 1904. Edward M. Holloway, clerk.

And afterwards, on the same day, to-wit: on the twenty-eighth day of May, 1904, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

SATURDAY, May 28, 1904.

Court met pursuant to adjournment.

Present: James G. Jenkins, circuit judge presiding. Hon. Peter S. Grosscup, circuit judge. Hon. Francis E. Baker, circuit judge.

JOHN W. McDONALD, Receiver,
vs.
CHARLES P. DEWEY ET AL.
1054. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

As per stipulation of the parties hereto this day filed herein leave is hereby given appellant to file instanter printed copies of the argument of Eugene E. Prussing, Esq. counsel for appellant, made orally at the hearing of this cause on May 10th, 1904, and to embrace in said printed copies of said argument certain authorities in support of points therein made. Leave is also hereby given appellees to file within two weeks from May 27, 1904, authorities in reply to those cited in printed copies of said argument of counsel for appellant.

a regular term of the United States circuit court of appeals for
venth circuit, begun and held at the United States court rooms
city of Chicago in said seventh circuit, on the fourth day of
er, 1904, of the October term in the year of our Lord one thou-
nine hundred and four and of our Independence the one hun-
nd twenty-ninth.

l afterwards, to-wit: on the third day of January, 1905, in the
r term last aforesaid, there was filed in the office of the clerk
court, the opinion of the court in the above entitled cause,
opinion is in the words and figures following, to-wit:

1054.

W. McDONALD, Receiver of the
t National Bank of Orleans, Ne-
ka, Appellant,
vs.
ES P. DEWEY, F. L. JEWETT,
s W. Jouvenat, G. C. Hatcher,
le M. Jouvenat, A. C. Kendig,
iam Mathison, Andrew K. Park,
llees.

1081.

ARLES P. DEWEY, Appellant,
vs.
W. McDONALD, Receiver of the
National Bank of Orleans, Ne-
a, Appellee.

Appeal and Cross Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Before Jenkins, Grosscup, and Baker, Circuit Judges.

ppellant receiver brought this suit against the appellees
in the title of cause 1054 to avoid certain alleged fraudulent
s of stock and to recover from the transferer, Charles P.
an assessment of $86.00 a share on 105 shares in the defunct

ill alleged in substance that the bank failed and became
t on May 20, 1897; that the receiver was appointed and
session on June 5, 1897; that on September 14, 1897, the
oller levied an assessment of $86.00 upon each share; that
8, 1894, Dewey was the registered owner of 105 shares; that
was then and continuously until its suspension insolvent,
vey knew it; that on May 8, 1894, Dewey assigned 95 shares
January 3, 1895, his remaining 10 shares to Frederick L.
who was irresponsible; that this assignment was colorable

only and was made by Dewey for the purpose of evading his liability as stockholder; that Jewett subsequently made transfers of stock so that, when the bank suspended, the 105 shares formerly standing in the name of Dewey stood upon the records of the bank as being owned as follows, Andrew K. Park 6 shares, William Mathison 4 shares, Jules W. Jouvenat 10 shares, Emile Jouvenat 10 shares, G. C. Hatcher 30 shares, A. C. Kendig 20 shares, F. L. Jewett 25 shares; that these transfers were made when the bank was insolvent, and for the purpose of evading the liability for an assessment, and to persons who were irresponsible and unable to respond to an assessment, as Dewey knew or ought to have known.

Dewey answered, denying that the bank was insolvent in May, 1894, or at any time prior to 1897, and denying therefore that he knew or had means of knowing of the bank's alleged insolvency from May, 1894, to January, 1895, when he assigned his stock; averring that the assignment to Jewett was made for the purpose of enabling Jewett to hold the shares as Dewey's agent, and that the subsequent transfers were made by Jewett for Dewey; denying that the purpose of disposing of his stock was to evade liability as stockholder; averring that the sales were outright and for the par value of the stock; denying that the purchasers were irresponsible and unable to respond to an assessment; averring that he had sold all his stock and that transfers, except as to 25 shares, were duly made on the bank's books prior to suspension; neither affirming nor denying the transfer of the 25 shares on the bank's books, but requiring the complainant to make strict proof in that regard.

The court found that the bank was organized in 1885 with a capital of 500 shares of $100.00 each, of which Dewey owned 105 in 1894; that Jewett acted as Dewey's agent; that Dewey sold his stock through Jewett in December, 1894, and January, 1895; that the bank was then insolvent and Dewey knew it; that 80 shares were transferred on the books of the bank to the purchasers before the bank suspended; that when the bank suspended and went into the hands of the receiver 25 shares still stood and now stand on the bank's books in the name of Jewett as Dewey's agent; that in January, 1895, after the sale of all his stock, Dewey "notified the president of the bank by letter that he was no longer a stockholder in the bank and directed that his name as vice-president should be erased from the stationery of the bank, and again about a month later wrote a second letter to the president of the bank to the same effect and protesting against the further use of his name on the stationery of the bank;" that of the bank's debts when Dewey sold his stock only $2,787.90 remained unpaid when the bank suspended, and of this Dewey's ratable share was $585.48.

From the decree fixing Dewey's liability at $585.48 and interest, the receiver appeals, and Dewey presents a cross-appeal.

ections of the national banking act that need to be referred to these:

SEC. 5139. The capital stock of each association shall be divided shares of one hundred dollars each, and be deemed personal perty, and transferable on the books of the association in such nner as may be prescribed in the by-laws or articles of associa-. Every person becoming a shareholder by such transfer shall, roportion to his shares, succeed to all the rights and liabilities he prior holder of such shares; and no change shall be made he articles of association by which the rights, remedies, or se-ity of the existing creditors of the association shall be impaired." The shares of this Nebraska bank were transferable only on the ks of the bank, in person or by attorney, on surrender of the ificate that represented the shares proposed to be transferred.)

SEC. 5210. The president and cashier of every national banking ciation shall cause to be kept at all times a full and correct list he names and residences of all the shareholders in the associa-, and the number of shares held by each, in the office where its iness is transacted. Such list shall be subject to the inspection ll the shareholders and creditors of the association, and the offi-authorized to assess taxes under State authority, during business-rs of each day in which business may be legally transacted. A y of such list, on the first Monday of July of each year, verified he oath of such president or cashier, shall be transmitted to the nptroller of the Currency."

SEC. 5151. The shareholders of every national banking associa-shall be held individually responsible, equally and ratably, and one for another, for all contracts, debts, and engagements of such ciation, to the extent of the amount of their stock therein, at the value thereof, in addition to the amount invested in such shares; * *"

ther facts are stated in the opinion.

AKER, circuit judge, after making the foregoing statement of the , delivered the opinion of the court:

ewey's assignment of his shares to Jewett did not affect the stion of his liability, for the transaction was not an out-and-out , but merely established agency. National Bank *v.* Case, 99 . 628.

ewett for Dewey sold 80 shares out-and-out and the transfers eof were duly made on the books of the bank. The statute says national bank shares shall be deemed personal property. The full lity of saleability is emphasized in Earle *v.* Carson, 188 U. S. 42. ar as the statute declares, the seller who has his shares transferred he books of the bank to his purchaser, ends his liability as a kholder. "Every person becoming a shareholder by such trans-

fer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares." If the English rule, as stated in National Bank *v.* Case, *supra*, had been adopted in this country, Dewey could not be held to any liability on account of the 80 shares transferred on the books (for the sale was out-and-out) and the purchasers would have succeeded to all the rights and all the liabilities of Dewey as stockholder.

The American rule is better, we think, and holds the former stockholder under certain conditions, even if he has made an out-and-out sale of his shares and has caused the proper transfers to be made on the books of the bank.

What are the conditions without the existence of which such a former stockholder cannot be held?

He cannot be held unless the bank was insolvent at the time of the transfer, for the creditors would not be injured. If they should ever sustain loss, it would be by reason of the bank's subsequently becoming unable to pay its obligations. But the negative does not affirm that such a former stockholder is liable to assessment by the comptroller if the bank ultimately (perhaps years later) goes into the hands of a receiver, simply from the fact that the bank, when he transferred his shares, was insolvent in the sense that if it then went into liquidation the assets would not discharge all the liabilities.

He cannot be held unless he knew or ought to have known that the bank was insolvent at the time of the transfer, for an out-and-out sale, found to have been made in good faith, cannot be impeached. But this negative does not affirm that he is liable if merely the two conditions concur, insolvency and his actual or imputed knowledge thereof. In this case, however, it is asserted that the concurrence of the two conditions establishes liability, and, furthermore, that the liability is not merely for the debts at the time of the transfer which remain unpaid at the time of the ultimate failure and suspension, but is for the amount of the deficiency in the assets to pay the debts at the time of the transfer, which amount flows onward like a river into the ultimate failure and suspension. It is obvious that it is unnecessary to cast even a curious glance at the second contention, if the first is untenable. We apprehend no true reason for holding that the mere concurrence of the bank's insolvency and the stockholder's actual or imputed knowledge thereof inevitably and without any other condition establishes the bad faith, the fraudulent intent, of the selling stockholder. His obligation to creditors is contractual, just as much as if he had entered into a written engagement with each person who was a creditor when he became a stockholder, and with each person who became a creditor while his name stood on the books of the bank as a stockholder. If at a particular time, as might be proven years later when the bank suspended, the bank, although then a going concern and meeting all its obligations from

y to day as presented, should be unable, if then put into liquida-
n, to pay its debts in full, and if, by reason of his knowledge of
h a condition, a stockholder could not dispose of his shares with-
t having fixed upon him a liability to respond in the indefinite
ure to the comptroller's assessment after the bank's ultimate fail-
e and suspension, national bank stock would not be very desir-
le property to own, its saleability in the market, which is a
minent feature in the statute's scheme, would be largely de-
oyed, and a condition would inevitably result which the law
uld discourage and not create, that the stockholder would be in-
strious in not knowing the affairs of his bank and very forgetful
anything that obtruded itself upon his attention. The receiver
this case does not concede that the supposed liability (whether
particular unpaid debts or for the stream of debts) would end if,
a time between the transfer and the ultimate failure and suspen-
n (two years and five months in the present instance), the bank
uld become prosperous and abundantly able to discharge all of
obligations out of its assets. The supposed liability would charge
selling stockholder with the fraudulent intent to cheat the bank's
ditors, even though he had diligently sought and had succeeded
finding a purchaser, who was willing to take the chances of the
k's ultimate failure and suspension and who was amply able to
pond to an assessment. We conceive that a sale of the character
anced could be made in perfect good faith, that the transfer of
shares could be effected on the books of the bank in accordance
h the statute and the by-laws of the bank, and that, again in ac-
dance with the statute, the purchaser would succeed to all the
hts and all the liabilities of the former holder of such shares. But
n if it were conceded that such a sale, in and of itself, conclu-
ly evidenced the bad faith and fraudulent intent of the seller, a
t of action in the receiver as the representative of the creditors
uld not be established. Surely, if the purchaser responded to the
ssment levied on the transferred shares, the receiver should
be permitted to maintain a suit against the seller. Surely, if
purchaser was able and compellable to respond, the receiver
uld not be permitted to sue the seller or the purchaser at
election, but should be required to collect from the purchaser
had succeeded to all the rights and liabilities of the seller. It is
enough that a sale be fraudulent as to creditors,—the creditors
t be injured by the fraud; and they are not injured if they have
rect and primary means of collecting their debts, without resort
he secondary means of setting aside the fraudulent sale. The
ument results in the conclusion that the mere concurrence of the
k's insolvency and the selling stockholder's actual or imputed
wledge thereof does not make out a case. The two conditions
ed must be accompanied by a third.

He cannot be held unless his out-and-out transfer was made to an irresponsible person, unable to respond to an assessment, whose financial condition was known or ought to have been known to him. With respect to knowledge of the purchaser's insolvency, it might be fair to hold that the seller, having knowledge that the assets of the bank would be insufficient, if the bank were then to go into liquidation, to meet fully its obligations, is chargeable with notice of the purchaser's insolvency, unless he be able to establish affirmatively that he had made reasonably diligent inquiry and had been misled or had been unable to discover the true financial condition of his intending buyer.

The necessity of the concomitance of the three conditions hereinabove stated is established by the case of Bowden *v.* Johnson, 107 U. S., 251, 261–2.

There are some expressions in Stuart *v.* Hayden, 169 U. S., 1, which, if taken out of their context and separated from the pleadings and evidence, might seem to countenance the contention that averment and proof of the third condition is unnecessary. On reference to the case in the circuit court of appeals for the eighth circuit (Stuart *v.* Hayden, 36 U. S. App., 462, 72 Fed., 402), it will be found that the bill averred that the transferees were insolvent; that the answer of the transferer relied on his ignorance of the bank's insolvency and his good faith in making the sale, but did not deny the insolvency of his transferees; and that the answer of the transferees "was in effect an admission of the averments of the bill." There was thus a virtual default as to the third condition, and it is fair to suppose that the transferer's argument in the supreme court was confined to the defense made in his answer. And the expressions in the opinion which are relied on have in the main been explained in Earle *v.* Carson, 188 U. S., 42.

In Earle *v.* Carson, *supra*, the court quotes the rule as stated by Mr. Thompson: "A transfer of shares in a failing corporation, made by the transferer with the purpose of escaping his liability as a shareholder, to a person who, from any cause, is incapable of responding in respect to such liability, is void as to the creditors of the company and to other shareholders, although as between the transferer and transferee it was out-and-out." And under the third heading of the opinion the court holds that the transferer must be chargeable with knowledge of the transferee's insolvency.

In this case the bill charges the existence of the third condition. As the finding of the court, in which we agree so far as it goes, is silent respecting the truth of the averment, it has been necessary for us to examine the evidence in that particular. Without stating the items, it is enough to say that we all agree that there is an utter failure of proof of the insolvency of the various transferees and, on the contrary, there is considerable proof that they were solvent and able to respond to an assessment.

ds to the other 25 shares, Jewett for Dewey endorsed the necessary signments and powers of attorneys upon the certificates and deliv- d them to the purchasers in Chicago, but no transfers on the books the banks were ever made.

The general rule (see Whitney *v.* Butler, 118 U. S. 655, Richmond Irons, 121 U. S. 27, Matteson *v.* Dent, 176 U. S. 521, Earle *v.* Car- , 188 U. S. 42) is thus stated in Whitney *v.* Butler: "In nearly of" the cases, "where the issue was between the receiver, repre- ting the creditors, and the person standing on the register of the k as a shareholder, it is said, generally, that the creditors of a ional bank are entitled to know who, as shareholders, have dged their individual liability as security for its debts, engage- nts, and contracts; that if a person permits his name to appear l remain in its outstanding certificates of stock, and on its ister, as a shareholder, he is estopped, as between himself and creditors of the bank, to deny that he is a shareholder; l that his individual liability continues until there is a trans- of the stock on the books of the bank, even where he has good faith previously sold it and delivered to the buyer the tificate of stock, with a power of attorney in such form as to able the transfer to be made. Some of the cases hold that the der is liable as a shareholder even where the buyer agreed to have transfer made on the books of the bank, but fraudulently or gligently failed to do so. But it will be found, upon careful ex- ination, that in no one of the cases in which these general prin- les have been announced, as between creditors and shareholders, s it appear that the precaution was taken, after the sale of the k, to surrender the certificates therefor to the bank itself, accom- nied (where such surrender was not by the shareholder in person) a power of attorney, which would enable its officers to make the nsfer on the register. The position of the seller, in such case, is alogous to that of a grantor of a deed deposited in the proper office be recorded. The general rule is, that the deed is considered as orded from the time of such deposit. 2 Washburn on Real Prop., 3, ch. 4, par. 52. Where the seller delivers the stock certificate l power of attorney to the buyer, relying upon the promise of the er to have the necessary transfer made, or where the certificate l power of attorney are delivered to the bank without communi- ng to its officers the name of the buyer, the seller may well be d liable as a shareholder until, at least, he shall have done all t he reasonably can do to effect a transfer on the stock register." n Earle *v.* Carson it was said that the presumption of liability otten by the presence of the name on the stock register is over- e by a finding that a *bona fide* sale had been made and that the er had performed every duty which the law imposed on him to are a transfer on the register of the bank. In the Whitney and

Earle cases the certificates, with the proper assignments and powers of attorney, were delivered to the bank. Whether, in view of the comparison of the bank to the office of the registrar of deeds, anything short of an actual delivery to the bank of the certificates with the proper assignments and powers of attorney, would be sufficient, is a question unnecessary to consider, because Dewey's letters to the bank fall far short of being all that he reasonably could have done to effect a transfer on the books. He failed to identify the various certificates for the 25 shares, to give the names and residences of the purchasers, and to connect each purchaser with the shares purchased by him. So, if the officers of the bank would have been justified, on the mere assertion of Dewey, in making the transfers on the books of the bank, it is evident that they could not have done so in the absence of the necessary data.

GROSSCUP, circuit judge, dissenting:

In the conclusion of the court, respecting the twenty-five shares of stock, I concur. From the conclusion of the court, respecting the remaining eighty shares, I feel obliged to dissent.

Preliminary to a statement of the reason for my dissent, I note two facts not brought out pointedly in the majority opinion, but clearly established by the record. The first of these is, that the final suspension of the bank, though it occurred two years and five months after Dewey's transfer of stock, is traceable, in the line of cause and effect, to the insolvency of the bank at the time of the transfer; that is, the suspension when it did occur, was not wholly the outcome of intervening causes, but was the direct outcome, in part at least, of causes existing at the time of the transfer.

The second fact is this: That though so far as the record discloses, Dewey transferred his shares to people not shown to have been insolvent, the motive that actuated the transfer, so far as Dewey was concerned, was to escape his liability as a stockholder in a bank that he knew to be insolvent.

These facts the majority opinion seems to accept. The opinion proceeds, as I understand it, upon the proposition of law, that though the final suspension was in line of cause and effect of insolvency existing at the time of the transfer, and though the transfer was made with the insolvency of the bank in mind, and to escape liability as a stockholder, nevertheless no liability attaches, because, before liability can attach, it must be shown, in addition to the facts stated, that transfer was made to persons themselves insolvent, or to persons who, for some good reason, could not be made to respond to the stockholder's liability. In the opinion of the majority, before liability attaches three facts must be concommitant, viz: Insolvency, the stockholder's knowledge thereof, and a transfer to persons themselves insolvent, or unable for any reason to respond, and the absence of any one of these facts defeats a right of action.

Stuart *vs.* Hayden, 169 U. S. 1, as I read that case, is a direct thority against that proposition. Though in that case the bill erred the insolvency of the transferees, the averment was contro-rted by the answer, and there was no finding of the court that ch insolvency existed; and the language employed by Mr. Justice rlan, upon which the judgment proceeded, seems to me to expressly clude the element of insolvency of the transferees as a condition be established before there could be recovery by the receiver.

"One who holds such shares," said Mr. Justice Harlan, "the bank ing at the time insolvent—cannot escape the individual liability posed by the statute by transferring his stock with intent simply avoid that liability, knowing or having reason to believe at the me of the transfer on the books of the bank, Richmond *vs.* Irons, 1 U. S. 27, 58, that it is insolvent or about to fail. A transfer th such intent, and under such circumstances, is a fraud upon the editors of the bank, and may be treated by the receiver as inoper-ive between the transferer and himself, and the former held liable a shareholder without reference to the financial condition of the nsferee. The right of creditors of a national bank to look to the dividual liability of shareholders, to the extent indicated by the tute, for its bank becomes insolvent, and the shareholder cannot, transferring his stock, require creditors to surrender this security as to him, and compel the receiver and creditors to look to the rson to whom his stock has been transferred. * * * If the nk be solvent at the time of the transfer, that is, able to meet its isting contracts, debts and engagements, the motive with which e transfer is made is, of course, immaterial; but if the bank be solvent, the receiver may, at least, without suing the transferee d litigating the question of his liability, look to those shareholders ho, knowing or having reason to know, at the time, that the bank as solvent, got rid of their stock in order to escape the individual bility to which the statute subjected them."

I do not acquiesce in the suggestion that this language is inad-rtent, or that Earl *vs.* Carson, 188 U. S. 42, was intended to over-le it. The principle formulated in Stuart *vs.* Hayden applied ecisely to the case there decided—a case in which insolvency of e transferees, apparently, was not considered as an element or con-tion of recovery—while Earl *vs.* Carson, also, had no concern ith the insolvency of the transferees as a condition essential to re-very. The question in Earl *vs.* Carson was, whether the bank be-g insolvent, the transferer could be held to stockholders' liability twithstanding his want of knowledge of such insolvency.

What seems to me to be a reasonable interpretation of the national nking act leads to the same conclusion. That act was framed as practical measure to meet practical conditions. Its chief purpose, questionably, was to make these banking associations safe as in-

stitutions authorized to issue currency, and to accept deposits. Accompanying this was the further purpose that the share of the bank like other forms of property, should be freely salable. But the latter purpose, plainly, was subsidiary to the former.

To carry out the chief purpose—security to the depositors—the act gives the depositor a succession of safe guards. The Government is required periodically to inspect the bank; the Government is given the summary right to close up the bank; and the stockholder, in the act of becoming such, collaterally contracts, to the extent of his stock, equally and ratably with others, that he will be liable for the contracts, debts and engagements of the bank.

Now to what extent is this third safeguard, the collateral contract, a fixed liability? Under what circumstances was it intended that the liability might be shifted to another? Section 5139 of the national banking act provides that the shares shall be transferable on the books of the association, and that every person becoming a shareholder by such transfer, shall, in proportion to his shares, succeed to all rights and liabilities of the prior holder. But under what circumstances was this intended to release the prior holder from his liability? The answer to this question determines the law applicable to the transfer of the eighty shares under consideration.

Practically, there is a great difference, so far as the security of the depositors is concerned, between transfers of stock by stockholders, in the usual course of purchase and sale of bank stock, and transfers made solely to avoid liability. In the transfers of shares in the usual course of purchase and sale, the shares ordinarily pass from substantial and solid interests to substantial and solid interests while in transfers to escape liability, the shares are apt to go to adventurers, or to others who themselves have something doubtful to trade off. True, the transferees in either case may, technically, be solvent; but the national banking act looked, not to solvency only, but to security—to the kind of security one desires when he is parting with his money on the credit of an endorser. Solvency, alone, does not make an endorser desirable. The personality of the endorser—his condition as a solid and safe, as well as a solvent man—is a prime consideration; for, though solvent, an endorser's credit may be so bad, or his business so speculative or otherwise precarious, that no one would be willing to extend credit upon his collateral obligation.

In the framing of the national banking act, Congress must be assumed to have had in mind these practical considerations. To say that Congress, wishing so far as could be done with safety, to make shares salable, could have entertained no fear that depositors would be hurt in their security by transfers of stock in the usual course of bank stock purchase and sale, is to say, what in the long run is true; for in such transfers the stockholder is usually replaced by a stock-

r equally desirable. But to say that Congress could not see depositors would be hurt in their security by transfers made by holders fleeing from an insolvent bank, and solely to escape liability on account of the insolvency of the bank, is to assume Congress disregarded human nature, and all the teachings of ience. To my mind it is clear that it was not intended in the nal banking act, that the stockholder should be able to drop ability to depositors, whose deposits were made on the credit of ability, by the simple device of a transfer; unless the transfer nade, not simply out and out, but in that good faith, also, that vith the usual course of bank stock purchases and sales; and ould exclude, clearly, a transfer made simply to escape the ob-ons growing out of known insolvency.

e statute thus interpreted, Dewey would be liable to the cred-f the bank, not only on the twenty-five shares, but on the shares also. What now, is the measure of that liability? t run to the creditors severally, so that only those who were ors at the time of the transfer may enforce it, or does it run to editors *en banc*, irrespective of when they become creditors, to orced by the receiver as an asset of the bank? Is it a liability e deficit as it existed at the time of suspension, or for the deficit ould have existed at the time of the transfer, had the suspen-nen taken place?

wering these questions in the order named, I am of the opinion ne contracts, debts and engagements of the bank for which was liable, are not to be held to be the contracts, debts and ements due to the creditors individually. The liability is for ntracts, debts and engagements of the bank as a unity—a con-s unity, like a continuous stream, changing from time to time ame, but still the same stream. The depositor who, when was a stockholder, deposited his money in the bank, and thus e a creditor, is not the only person interested in Dewey's con-make good, under certain circumstances, the debts, contracts, gagements of the bank. He who, the next day after Dewey s stock, deposited his money, is equally interested; for such epositor, unless all safeguards such as this fail, had the right upon the fact, that in the hour of Dewey's withdrawal as a lder, the assets of the bank were more than equal to its lia-or in case a deficit existed, that the then stockholders would ect to call to make up such deficit.

vering the second question, I think, that the measure of lia-s the deficit that would have existed had the bank liquidated ime the transfer was made. Dewey, though knowing of the nsolvency, was under no entire disability respecting the sale of ck. Could a purchaser be found, solvent or insolvent, Dewey ransfer to him his stock. But in case it was not made in the

good faith referred to, the transfer would not release his existing liability for the then contracts, debts and engagements of the bank. Now the measure of that liability, had it then been ascertained, would have been the difference between the bank's liabilities and its assets. That the bank was not then suspended, that the deficit was not then ascertained, and made good, cannot be charged to Dewey; for it was no part of his duty, and probably was beyond his power, to bring about a suspension of the bank.

The construction given to the national banking law thus outlined, seems to me to be the one that most nearly meets the just purpose that must have been in the mind of Congress. Thus construed, the act is not an embargo upon free disposal of this kind of property by the holder of the property; nor does it on the other hand, afford a premium to him who manages to get out stealthily, before the suspicions of the Government are awakened, or the depositors of the bank advised.

The decree, according to my view, should have required that an accounting of the liabilities and assets of the bank be taken, as of the day that Dewey transferred his shares, and that ratably with other shareholders, as of that day, Dewey be held liable to the receiver of the bank for the deficiency found to exist. Such a decree would do Dewey no injustice, would do the creditors no injustice, and would carry out, according to my judgment, the plain purposes and spirit of the national banking act, as shown in all its provisions—those calculated to promote the interests of the stockholders, as well as those calculated to protect the interests of the depositors.

On the cross-appeal, the decree is affirmed; on the appeal, the decree is reversed with a direction to enter a decree against Dewey for his full assessment on the 25 shares and for interest thereon.

And afterwards, on the same day, to-wit: on the third day of January, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, January 3, 1905.

ourt met pursuant to adjournment.
resent: Hon. James G. Jenkins, circuit judge presiding. Hon.
r S. Grosscup, circuit judge Hon. Francis E. Baker, circuit
ge.

N W. McDONALD, Receiver of
e First National Bank of Or-
ans, Nebraska,
vs.
RLES P. DEWEY, FREDERICK
. Jewett, Jules W. Jouvenat,
C. Hatcher, Whose First Name
Unknown; Emile W. Jouve-
t; A. C. Kennedy, Whose First
ame is Unknown; William
athison, and Andrew K. Park.

1054. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

his cause came on to be heard on the transcript of the record
the circuit court of the United States for the northern district
linois, and was argued by counsel.
n consideration whereof, it is now here ordered, adjudged and
eed by this court that the decree of the said circuit court in this
e be, and the same is hereby reversed with costs; and that this
e be, and the same is hereby remanded to the said circuit court
a direction to enter a decree against Dewey for his full assess-
t on the twenty-five shares and for interest thereon and for
ier proceedings in accordance with the opinion of this court.

nd afterwards, to-wit: on the tenth day of January, 1905, in the
ber term last aforesaid, came John W. McDonald receiver, by
counsel Mr. E. E. Prussing and Mr. F. M. Hall, and filed in the
e of the clerk of this court a notice of motion, which notice of
on is in the words and figures, following, to-wit:

3

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1904.

JOHN W. McDONALD, Receiver of the First National Bank of Orleans, Nebraska, Appellant,
vs.
CHARLES P. DEWEY, F. L. JEWETT, Jules W. Jouvenat, G. C. Hatcher, Emil M. Jouvenat, A. C. Kendig, William Mathison, Andrew K. Park, Appellees.

CHARLES P. DEWEY, Appellant,
vs.
JOHN W. McDONALD, Receiver of the First National Bank of Orleans, Nebraska, Appellee.

Nos. 1054-1081. Appeal and Cross-appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

To R. S. Thompson, Esq., attorney for C. P. Dewey:

Please take notice that on Tuesday, the tenth day of January, 1905, at the hour of ten o'clock a. m., we shall suggest to said court the death of C. P. Dewey since the submission of said cause, and move to amend the order of judgment heretofore entered therein so that the same shall be entered *nunc pro tunc* as of the tenth day of May, 1904, in accordance with the motion and order, copies of which are hereto attached, at which time and place you may appear if you see fit.

Chicago, January 9, 1905.

F. M. HALL AND
E. E. PRUSSING,
Attorneys for McDonald, Receiver.

Received copy of foregoing notice with copies therein mentioned attached.

R. S. THOMPSON.

Indorsed: Filed Jan. 10, 1905. Edward M. Holloway, clerk.

And afterwards, on the same day, to-wit: on the tenth day of January, 1905, in the October term last aforesaid, came John W. McDonald receiver, by this counsel Mr. E. E. Prussing and Mr. F. M. Hall, and filed in the office of the clerk of this court a motion suggesting death of party, which motion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1904.

JOHN W. McDONALD, Receiver of the First National Bank of Orleans, Nebraska, Appellant,
vs.
CHARLES P. DEWEY, F. L. JEWETT, Jules W. Jouvenat, G. C. Hatcher, Emile M. Jouvenat, A. C. Kendig, William Mathison, Andrew K. Park, Appellees.

CHARLES P. DEWEY, Appellant,
vs.
JOHN W. McDONALD, Receiver of the First National Bank of Orleans, Nebraska, Appellee.

Nos. 1054–1081. Appeal and Cross-appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

And now comes John W. McDonald, receiver of the First National Bank of Orleans, Nebraska, above mentioned, by his counsel F. M. Hall and Eugene E. Prussing, and suggests and makes known to the court that on the tenth day of June, 1904, and after the above causes were argued and had been submitted to the court and taken under advisement by the court, and while said causes were so under advisement, the said Charles P. Dewey departed this life and the said John W. McDonald, receiver as aforesaid by his said counsel, moves that the judgment herein entered by this honorable court at the present term, and on the third day of January, 1905, be amended by adding thereto a clause providin- that said judgment be entered *nunc pro tunc* as of the tenth day of May, 1904, on which date said cause was argued and submitted to this court.

F. M. HALL AND
EUGENE E. PRUSSING,
Solicitors for J. W. McDonald, Receiver.

UNITED STATES OF AMERICA, Seventh Judicial District, } *ss.:*

Eugene E. Prussing being duly sworn deposes and says that he is one of the solicitors for John W. McDonald, receiver of the First National Bank of Orleans, Nebraska, appellant in the above entitled cause and that the statements contained in the foregoing motion by him subscribed are true.

EUGENE E. PRUSSING.

Subscribed and sworn to before me this 10th day of January, A. D. 1905.

[SEAL.] EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

Indorsed: Filed Jan. 10, 1905. Edward M. Holloway, clerk.

And to-wit: on the sixth day of January, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

FRIDAY, January 6, 1905.

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge presiding. Hon. Francis E. Baker, circuit judge. Hon. J. Otis Humphrey, district judge.

Order.

It is ordered by the court that the Hon. J. Otis Humphrey, judge of the district court of the United States for the southern district of Illinois, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Humphrey appeared and took his seat as a member of said court.

And afterwards, to-wit: on the tenth day of January, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, January 10, 1905.

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge presiding. Hon. Francis E. Baker, circuit judge. Hon. J. Otis Humphrey, district judge.

JOHN W. McDONALD, Receiver of the First National Bank of Orleans, Nebraska, *vs.* CHARLES P. DEWEY, F. L. JEWETT, Jules W. Jouvenat, G. C. Hatcher, Emile M. Jouvenat, A. C. Kennedy, William Mathison, Andrew K. Park.	1054. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

It is now here suggested and it appearing to the court that said Charles P. Dewey departed this life on the tenth day of June, 1904, and after the above cause was argued and had been submitted to

court and taken under advisement by the court, and while said se was so under advisement, it is therefore on motion of said n W. McDonald, receiver of the First National Bank of Orleans, raska, ordered, Mr. R. S. Thompson appearing and excepting reto on behalf of the executors of the estate of Charles P. Dewey, t the decree of this court entered herein at the present term on third day of January, 1905, being one of the days of the term of court, be, and the same is hereby amended to read as follows: his cause came on to be heard on the transcript of the record n the circuit court of the United States for the northern district llinois, and was argued by counsel.

n consideration whereof, it is now here ordered, adjudged and reed by this court that the decree of the said circuit court in this se, be, and the same is hereby reversed with costs; and that this se, be, and the same is hereby remanded to the said circuit court a direction to enter a decree against Dewey for his full assess- t on the twenty-five shares and for interest thereon and for her proceedings in accordance with the opinion of this court.

nd it is further ordered that this decree, be, and the same is red *nunc pro tunc* as of the tenth day of May, 1904.

nd afterwards, to-wit: on the first day of February, 1905, in the ber term last aforesaid, the following further proceedings were and entered of record, to-wit:

WEDNESDAY, February 1, 1905.

urt met pursuant to adjournment.

esent: Hon. James G. Jenkins, circuit judge presiding. Hon. S. Grosscup, circuit judge. Hon. Francis E. Baker, circuit e.

W. McDONALD, Receiver of the rst National Bank of Orleans, braska,	1054. Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.
vs.	
HARLES P. DEWEY ET AL.	

w comes the appellant John W. McDonald, receiver as afore- by F. M. Hall and Eugene E. Prussing his solicitors, and shows e court that said appellee Charles P. Dewey has departed this nd that his last will and testament has been duly proved nd admitted to record in the probate court of Cook county, is, and that letters testamentary have been duly issued thereon f said court to Chauncy Dewey and Charles P. Killen as ex- rs of the last will and testament of said Charles P. Dewey, sed, and upon motion of said appellant, John W. McDonald, ver, it is ordered that this cause be revived against said Chaun-

cey Dewey and Charles T. Killen as executors of the last will and testament of said deceased and that such executors be substituted as appellees herein in place of said Charles P. Dewey, deceased, and that said executors enter their appearance in this court within five days from the service of a copy of this order.

And afterwards, to-wit: on the eleventh day of February, 1905, in the October term last aforesaid, came John W. McDonald, receiver, by his counsel Mr. F. M. Hall and Mr. Eugene E. Prussing, and filed in the office of the clerk of this court his petition for appeal and assignment of errors, which petition for appeal and assignments of errors are in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh *District*, October Term, 1904.

JOHN W. McDONALD, Receiver of the First National Bank of Orleans, Nebraska, Appellant, *vs.* CHARLES P. DEWEY, F. J. JEWETT, Jules W. Jouvenat, G. C. Hatcher, Emile M. Jouvenat, A. C. Kendig, William Mathison, Andrew K. Park.	No. 1054. Petition for Appeal and Assignment of Errors for Appellant, John W. McDonald, Receiver of the First National Bank of Orleans, Nebraska.

The appellant, John W. McDonald, receiver of the First National Bank of Orleans, Nebraska, feeling himself aggrieved by the order and judgment heretofore entered by this court in this cause, does hereby appeal from said order, judgment and decree to the Supreme Court of the United States, and prays that his said appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said judgment, order and decree *was* made and entered, duly authenticated, may be sent to said Supreme Court, and as reasons for and for the purpose of said appeal of said John W. McDonald, receiver of said First national bank, appellant, now here by his counsel Eugene E. Prussing and Frank M. Hall, does make and assign the following assignment of errors prejudicial to him which he alleges to have intervened in and to be disclosed by said record, proceedings, judgment and decree.

1st. The court erred in holding and deciding that the insolvency of the First National Bank of Orleans, Nebraska, and Charles P. Dewey's knowledge of that fact were not sufficient to render him liable as a stockholder for the assessment of $86.00 a share made upon his stock in said bank by the Comptroller of the Currency.

2nd. The court erred in holding and deciding that before liability

ies to the said Charles P. Dewey in this case, three facts must
ncomitant, viz., insolvency, the stockholder's knowledge thereof,
transfer to persons themselves insolvent or unable for any
n to respond, and that the absence of any one of these facts
s a right of action in this case.
. After the court had found that the First National Bank of
ns, Nebraska, was insolvent and that Charles P. Dewey knew
act at the time he transferred his stock, it was error not to ren-
judgment in favor of the appellant and against the said Charles
wey for $86.00 a share on his 105 shares of stock together with
st thereon from May 20, 1897, the date of the failure of the

. The court erred in holding and deciding that the mere con-
nce of the bank's insolvency and the selling stockholder's actual
ledge or imputed knowledge thereof, does not render him liable.
. The court erred in holding and deciding that there was an
failure of proof of the insolvency of the various transferees of
harles P. Dewey bank stock.
. The court erred in not holding and finding that the trans-
of the Charles P. Dewey bank stock were insolvent and irre-
ible and unable to respond to an assessment.
herefore, the appellant, John W. McDonald, receiver of the
National Bank of Orleans, Nebraska, prays that the said appeal
be allowed and that said judgment and decree of this court
be reversed, vacated and set aside, and that judgment or de-
may be rendered against the said Charles P. Dewey for the full
nt of his stock assessment, to-wit: the sum of $86.00 per share
105 shares of stock in said First National Bank of Orleans,
aska, together with interest thereon at the rate of seven per
per annum, from said 20th day of May, 1897, together with

JOHN W. McDONALD,
Receiver, etc.,
By F. M. HALL AND
E. E. PRUSSING,
His Att'ys.

dorsed: Filed Feb. 11, 1905. Edward M. Holloway, clerk.

d afterwards, on the same day, to-wit: on the eleventh day of
uary, 1905, in the October term last aforesaid, the following fur-
proceedings were had and entered of record, to-wit:

SATURDAY, February 11, 1905.

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge presiding. Ho Peter S Grosscup, circuit judge. Hon. Francis E. Baker, circu judge.

JOHN W. McDONALD, Receiver of the First National Bank of Orleans, Nebraska,
vs.
CHARLES P. DEWEY ET AL.

1054. Appeal from the C cuit Court of the Unite States for the Northe District of Illinois, Nort ern Division.

Now this day comes the appellant by his counsel, Mr. E. Prussing and presents his assignment of errors and petition for a peal to the Supreme Court of the United States. Thereupon it ordered that the appeal be, and the same is hereby allowed as prave for upon the filing of a bond for costs in the sum of five hundre dollars ($500.00) to be approved by a judge or the clerk of this cour

And afterwards, to-wit: on the twenty-fourth day of Februar 1905, in the October term last aforesaid, there was filed in the offic of the clerk of this court, the bond on appeal in the above entitle cause, which bond is in the words and figures following, to-wit:

Know all men by these presents, that we, John W. McDonald, a receiver of the First National Bank of Orleans, Nebraska, as princi pal and S. H. Burnham, of Lincoln, Nebraska, as surety are held and firmly bound unto Chauncey Dewey, and Charles T. Killen, a executors of the last will and testament of Charles P. Dewey, de ceased in full and just sum of five hundred dollars ($500.00) to b paid to the said executors, their successors, attorneys or assigns; t which payment well and truly to be made, we bind ourselves, ou heirs, executors and administrators jointly and severally, by thes presents.

Sealed with our seals and dated this 18th day of February, 190

Whereas lately at a session of the United States circuit court o appeals in and for the seventh circuit in a suit depending in sai court between John W. McDonald, as receiver of the First National Bank of Orleans, Nebraska, against Charles P. Dewey, *et al.*, a de cree was rendered and the said Dewey having departed this life sai suit was duly revived against his said executors and said executor were substituted therein in place of said Dewey; and

Whereas the said McDonald having prayed an appeal from sai decree to the Supreme Court of the United States, which appeal wa duly allowed by said court upon his filing a bond in the penal sum

of five hundred dollars ($500.00), as will appear by the orders of said court duly entered of record;

Now the conditions of the above obligation is such, that if the said John W. McDonald, as receiver as aforesaid shall prosecute his appeal with effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN W. McDONALD, [SEAL.]
As Receiver of the First National
Bank of Orleans, Nebraska.

S. H. BURNHAM. [SEAL.]

Attest: F. M. HALL.

Signed, sealed and delivered in the presence of
L. R. EASTERLY.

I know this bond to be absolutely good.

A. E. HARVEY,
Attorney for Respondent.

Approved:
EDWARD M. HOLLOWAY, Clerk.

Indorsed: Filed Feb. 24, 1905. Edward M. Holloway, clerk.

And afterwards, on the same day, to-wit: on the twenty-fourth day of February, 1905, in the October term last aforesaid, there was filed in the office of the clerk of this court a certified copy of the order of February 1, 1905, with acceptance of service, in the words and figures following, to-wit:

WEDNESDAY, February 1, 1905.

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge presiding. Hon. Peter S. Grosscup, circuit judge. Hon. Francis E. Baker, circuit judge.

1054.

JOHN W. MCDONALD, Receiver of the First National Bank, Orleans, Nebraska,

vs.

CHARLES P. DEWEY, F. L. JEWETT, Jules W. Jouvenat, G. C. Hatcher, Emile M. Jouvenat, A. C. Kendig, William Mathison, Andrew K. Park.

1081.

CHARLES P. DEWEY

vs.

JOHN W. MCDONALD, Receiver of the First National Bank of Orleans, Nebraska.

Appeal from the Circuit — of the United States for the Northern District of Illinois, Northern Division.

And now comes the appellant, John W. McDonald, receiver, as aforesaid, by F. M. Hall and Eugene E. Prussing, his solicitors, and shows to the court that said appellee, Charles P. Dewey, has departed this life; and that his last will and testament has been duly proved and admitted to record in the probate court of Cook county, Illinois, and that letters testamentary have been duly issued thereon out of said court to Chauncey Dewey and Charles T. Kille-, as executors of the last will and testament of said Charles P. Dewey, deceased, and upon motion of said appellant McDonald,

It is ordered that this cause be revived against said Chauncey Dewey and Charles T. Killen as executors of the last will and testament of said deceased and that such executors be substituted herein as appellees and cross-appellants in place of said Charles P. Dewey, deceased, and that said executors enter their appearance in this court within five days from the service of a copy of this order.

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing typewritten pages numbered from 1 to 2, inclusive, contain a true copy of the order of the United States circuit court of appeals for the seventh circuit, entered on the first day of February, 1905, in the cases of John W. McDonald, receiver of the First National Bank of Orleans, Nebraska *vs.* Charles P. Dewey *et al.* and Charles P. Dewey, *et al vs.* John W. McDonald, receiver of the First National Bank of Orleans, Nebraska, Nos. 1054 and 1081, October term, 1904, as the

e remains upon the files and records of the United States circuit
t of appeals for the seventh circuit.
n testimony whereof I hereunto subscribe my name and affix the
L.] seal of said United States circuit court of appeals for the
seventh circuit, at the city of Chicago, this first day of Feb-
y, A. D. 1905.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of
Appeals for the Seventh Circuit.

CHICAGO, 2/9/1905.

eceived copy of within certified copy of order.

CHAUNCEY DEWEY,
CHARLES T. KILLEN,
Executors.

ndorsed: Filed Feb. 24, 1905. Edward M. Holloway, clerk.

nited States Circuit Court of Appeals for the Seventh Circuit.

Edward M. Holloway, clerk of the United States circuit court
ppeals for the seventh circuit, do hereby certify that the foregoing
written and printed pages, numbered from 1 to 39, inclusive,
ain a true copy of the papers filed (except briefs of counsel), and
eedings had thereon in the United States circuit court of appeals
the seventh circuit, in the case of John W. McDonald, receiver of
First National Bank of Orleans, Nebraska, *vs.* Charles P. Dewey,
. Jewett, Jules W. Jouvenat, G. C. Hatcher, Emile M. Jouvenat,
. Kendig, William Mathison and Andrew K. Park, No. 1054,
ber term, 1903, as the same remains upon the files and records
ie United States circuit court of appeals, for the seventh circuit.
n testimony whereof I hereunto subscribe my name and affix the
of said United States circuit court of appeals for the seventh
uit, at the city of Chicago, this twenty-seventh day of February,
. 1905.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

ndorsed on cover: File No. 19,697. U. S. circuit court of ap-
s, 7th circuit. Term No. 220. John W. McDonald, receiver of
First National Bank of Orleans, Nebraska, appellant, *vs.*
uncey Dewey and Charles T. Killen, as executors of the last
and testament of Charles P. Dewey, deceased. Filed April
1905. File No. 19,697.

FILE COPY.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

Office Supreme Court U. S.
FILED
FEB 17 1906
JAMES H. McKENNEY,
Clerk.

No. 220.

JOHN W. McDONALD, AS RECEIVER OF THE FIRST NATIONAL BANK OF ORLEANS, NEBRASKA,
Appellant,

v.

CHAUNCEY DEWEY AND CHARLES T. KILLEN, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF CHARLES P. DEWEY, DECEASED,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF APPELLANT.

F. M. HALL,
ROSCOE POUND, AND
E. E. PRUSSING,
Solicitors for Appellant.

R. S. THOMPSON AND
ANDREW E. HARVEY,
Solicitors for Appellees.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

JOHN W. McDONALD, AS RECEIVER OF THE FIRST NATIONAL BANK OF ORLEANS, NEBRASKA,

Appellant,

v.

CHAUNCEY DEWEY AND CHAS. T. KILLEN, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF CHARLES P. DEWEY, DECEASED,

Appellees.

No. 220.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF APPELLANT.

F. M. HALL, ROSCOE POUND and E. E. PRUSSING, *Solicitors for Appellant.*

R. S. THOMPSON and ANDREW E. HARVEY, *Solicitors for Appellees.*

STATEMENT.

This is a suit to enforce an assessment of $86 a share made by the comptroller of the currency upon 105 shares of stock in the First National Bank of Orleans, Nebraska,

which failed on May 20, 1897. The shares having been transferred, it seeks to set aside these transfers and to hold the original owner thereof. The Circuit Court fixed the liability of Charles P. Dewey, the principal defendant, at $585.48 and interest. An appeal was taken to the Circuit Court of Appeals, which reversed the decree and directed a new decree against said Charles P. Dewey for the full amount of the assessment upon 25 of the 105 shares in question, or some $2,150, and interest. From that decree the present appeal is taken by the receiver, who contends that there should be a recovery upon the whole number of 105 shares.

The bill was filed in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, by Peter O. Hedlund, as Receiver of the First National Bank of Orleans, Nebraska, against Charles P. Dewey and seven others. It alleges, in substance, that the bank failed on May 20, 1897; that Hedlund (who has since been superseded by McDonald, the present receiver) was appointed and took possession on June 5, 1897; that on September 14, 1897, the comptroller levied an assessment of $86 a share upon the capital stock; that Charles P. Dewey was on May 8, 1894, the owner of 105 shares of stock in said bank and registered as such; that the bank was then and remained continuously until its suspension on May 20, 1897, insolvent; that its insolvency was known to Dewey; that on May 8, 1894, said Dewey assigned 95 of said shares to the defendant Jewett, who was wholly irresponsible, which transfer was colorable only, and for the sole purpose of evading his liability as a stockholder; that said Jewett thereafter at various times transferred 80 of said 95 shares to the several other defendants and that on January 3, 1895, said Dewey transferred his remaining 10 shares to said Jewett, so that at the time the bank failed said 105 shares were registered upon the

books of the bank as follows: Andrew K. Park, 6 shares, William Mathison, 4 shares, Jules W. Jouvenat, 10 shares, Emile Jouvenat, 10 shares, C. C. Hatcher, 30 shares, A. C. Kindig, 20 shares, F. L. Jewett, 25 shares; and that said several transfers were made at a time when the bank was and was by Dewey known to be insolvent, for the purpose of evading liability for an assessment, and to irresponsible persons, as said Dewey knew or should have known.

The answer of said Charles P. Dewey denies that the bank was insolvent in May, 1894, or at any time prior to 1897; denies that he knew or had any means of knowing of its alleged insolvency at the time of said transfers; sets up that the transfer to Jewett was made to the latter to hold as Dewey's agent and that Jewett made the subsequent transfers thereof for Dewey; denies that the purpose of said transfers was to avoid liability as a stockholder; denies that the purchasers were irresponsible and unable to respond for the assessment; sets up that the transfers were outright and for the par value of the stock, that he had sold all his stock, and that, with the exception of 25 shares, all transfers had been duly made on the books of the bank prior to its suspension.

The Circuit Court (pp. 275-278) found, among other things, as follows: that Charles P. Dewey purchased 120 shares of the stock of said bank in 1891; that in 1892 he sold 15 shares, as to which no claim is made in this cause; that of his remaining 105 shares, he transferred 95 shares to various persons in December, 1894, and the remainder on January 10, 1895; that said sales were all made through the defendant Jewett, who acted merely as agent of Dewey and had no interest in the stock, but held it for Dewey in his name; that the bank failed on May 20, 1897, about two years and five months after the sale of the stock by Dewey; that the bank was insolvent in December, 1894,

and January, 1895, at the time Dewey sold the said 105 shares, and that Dewey, who was vice-president of the bank from January, 1892, to January, 1895, knew or ought to have known that fact; that three certificates aggregating 25 shares (and part of the 105 shares in controversy) were not transferred on the books of the bank, and still stood in the name of Jewett, who held only as Dewey's agent, at the date when the bank suspended; that the claims of creditors of the bank who were such when Dewey sold his stock and remained such at the time of the failure, aggregated $11,839.15, of which, however, it was found that only $2,787.90 remained unsatisfied; and that of this, the ratable share of Dewey was $585.48, for which sum, decree was rendered.

On appeal by the receiver, the Circuit Court of Appeals, in an opinion by Mr. Circuit Judge Baker, Mr. Circuit Judge Jenkins concurring, reversed the decree of the Circuit Court and directed a new decree for the full amount of the assessment on the 25 shares standing in the name of Jewett at the time of the failure (305). They held as to 80 shares that although the bank was insolvent at the time of the sale of the stock and was known to be insolvent, and although the transfer was made for the purpose of avoiding liability upon the stock in view of such known insolvency, there could be no recovery without proof of an additional fact, namely, that the several transferees were likewise insolvent. It was therefore decided that he could not be held upon these shares. As to the 25 shares, the court held that as they stood in Jewett's name (for Dewey) at the time of the failure, and as Dewey had not surrendered the certificates to the bank or given its officers such data as to enable them to make a transfer on the books, he remained liable for the assessment (298-300). Mr. Circuit Judge Grosscup concurred as to the 25 shares, but dissented as to the remainder,

holding that proof that assignment was made when the bank was insolvent, with knowledge of its insolvency, for the purpose and with the intent of avoiding the stockholder's liability, was sufficient to authorize recovery.

From this decree the present appeal is taken. Pending appeal, Dewey died and the cause has been revived against his executors (314).

The assignments of error follow:

ASSIGNMENTS OF ERROR.

"1st. The court erred in holding and deciding that the insolvency of the First National Bank of Orleans, Nebraska, and Charles P. Dewey's knowledge of that fact were not sufficient to render him liable as a stockholder for the assessment of $86.00 a share made upon his stock in said bank by the Comptroller of the Currency.

"2d. The court erred in holding and deciding that before liability attaches to the said Charles P. Dewey in this case, three facts must be concomitant, viz., insolvency, the stockholder's knowledge thereof, and a transfer to persons themselves insolvent or unable for any reason to respond, and that the absence of any one of these facts defeats a right of action in this case.

"3d. After the court had found that the First National Bank of Orleans, Nebraska, was insolvent and that Charles P. Dewey knew that fact at the time he transferred his stock, it was error not to render a judgment in favor of the appellant and against the said Charles P. Dewey for $86.00 a share on his 105 shares of stock together with interest thereon from May 20, 1897, the date of the failure of the bank.

"4th. The court erred in holding and deciding that the mere concurrence of the bank's insolvency and the selling stockholder's actual knowledge or imputed knowledge thereof, does not render him liable.

"5th. The court erred in holding and deciding that there was an utter failure of proof of the insolvency of the various transferees of the Charles P. Dewey stock.

"6th. The court erred in not holding and finding that the transferees of the Charles P. Dewey bank stock were insolvent and irresponsible and unable to respond to an assessment."

Upon these assignments of error, we shall submit the following points:

(1.) Under the decision of this court in *Stuart v. Hayden*, 169 U. S. 1, a decree should be rendered for the full assessment on 105 shares upon the facts found.

(2.) Under a proper construction of the provisions of the National Banking Act, Dewey's estate should be held for the full assessment upon 105 shares.

(3.) The American rule as to the effect of transfers of stock in an insolvent corporation upon statutory stockholder's liability is that such transfers will only divest the liability where made in good faith and to solvent transferees, and if made for the purpose and with the intent of avoiding liability upon the stock of a corporation known to be insolvent, the assignor remains liable.

(4.) Whether or not the transferees were affirmatively shown to be insolvent, it clearly appears that their financial status was very doubtful and that their liability was and is far less valuable to creditors than that of their assignor.

(5.) The transfers being fraudulent and invalid when made, the assignor remained liable down to the failure, and should be held for the full amount of the assessment.

I.

Under the decision of this court in Stuart v. Hayden, 169 U. S. 1, upon proof of insolvency of the

bank at the time of the assignment, knowledge thereof by Dewey at that time, and that the purpose and intent of the transfer was to escape his liability upon the stock in an insolvent bank, a decree should be rendered for the full assessment on 105 shares.

The majority of the Circuit Court of Appeals held that, in order to avoid the transfers and attach the stockholder's liability to the assignor, three conditions or elements must concur, namely, (1) the bank must have been insolvent at the time of the assignment of the stock; (2) the assignor must have known or have been chargeable with knowledge that the bank was insolvent, so that the transfer was not made in good faith as an ordinary business transaction, but for the purpose and with the intention of avoiding liability; (3) the transfer must have been made to an irresponsible person, unable to respond to an assessment, whose financial condition was or ought to have been known to the assignor. We submit that prior decisions of this court, especially *Stuart v. Hayden*, 169 U. S. 1, have concluded this matter, and that, under the decisions of this court, if the bank is insolvent, and is known to be insolvent at the time of the transfer, a transfer not in good faith but made to avoid liability upon the stock will not be given effect as against creditors, but this fact in and of itself will suffice to hold the assignor without further proof as to the financial status of the assignees.

Stuart v. Hayden, 169 U. S. 1.
Earle v. Carson, 188 U. S. 42.
National Bank v. Case, 99 U. S. 632.

In *Stuart v. Hayden*, the averments of the amended bill, so far as this court considered them material, are thus stated in the opinion by Mr. Justice Harlan:

"The amended bill alleged in substance that, at the time

of the transaction between Stuart and Gruetter & Joers, the former was fully advised of the failing condition and insolvency of the bank, and transferred his stock to them in anticipation of its early failure and the necessary enforcement of the liability of shareholders for the benefit of creditors, and with the intent to evade such liability and to defraud the creditors of the bank. The relief sought was a decree setting aside the transfers of stock, and adjudging that Stuart was liable as a shareholder of the bank under the assessment made by the Comptroller of the Currency. It was further alleged by the receiver that Gruetter & Joers were, at the time of the transfer to them of Stuart's stock, pecuniarily irresponsible persons, from whom the amount of such assessment upon each share of the stock so owned and held by Stuart could not be made by legal process or otherwise."

The facts, as found in the Circuit Court, and on appeal in the Circuit Court of Appeals, are thus stated so far as this court deemed them material, in the same opinion of Mr. Justice Harlan, as follows:

"The decree in the Circuit Court recited—though not in the form of a finding of facts—that on and prior to January 3, 1893, Stuart was the owner of and had standing in his name upon the books of the bank the shares of stock above mentioned; that on or about December 16, 1892, and for more than eight years prior to that date, he was a member of the Board of Directors and of the finance committee of the bank; that on both of the above dates he had knowledge of its then existing insolvency; that at the time of the transfer of the stock he represented to Gruetter & Joers that the bank was in a solvent and prosperous condition, and that such representation was made for the purpose of inducing them to purchase the stock, and of evading and escaping his liability as a shareholder for an assessment thereon. It was then ordered, adjudged and decreed that the sale, assignment and transfer of the one hundred and fifty shares of stock of the Capital National Bank was wholly void as against the receiver and Gruetter & Joers; that the sale, assignment and transfer be set

aside, cancelled and held for naught; that the stock be reinstated upon the books of the bank in the name of Stuart, who was declared to be the holder and owner thereof; that Stuart, within twenty days from the date of the decree, pay to the receiver the full amount of the assessment against the stock, and that the receiver recover from him the sum of fifteen thousand dollars, together with interest at the rate of seven per cent per annum, from the 10th day of July, 1893, being in the aggregate the sum of sixteen thousand eight hundred seventy-five and 42-100 dollars; that Stuart, within twenty days from the date of the decree, make full restitution and payment to Gruetter & Joers of the amount of the purchase price of the stock, to-wit, the sum of eighteen thousand dollars, together with interest thereon at the rate of seven per cent per annum, from the third day of January, 1893, being in the aggregate the sum of twenty thousand nine hundred and five dollars; that Gruetter & Joers be relieved from all liability to the receiver for and on account of any assessment on the stock, and in case Stuart neglected to pay each of the aforesaid sums of money, together with the costs of the suit, to be taxed by the clerk, that execution should issue therefor.

Upon appeal to the Circuit Court of Appeals the decree was reversed, without costs to either party, and the cause was remanded with instructions to enter a decree declaring the transfer of stock from Stuart to Gruetter & Joers to be fraudulent and voidable as to the receiver of the bank; that the receiver recover of Stuart the assessment made upon him, with costs; and that Gruetter & Joers were not entitled to relief against Stuart in this suit, and their cross-bill should be dismissed with costs to Stuart. 36 U. S. App. 462. In the opinion of that court it is stated that the evidence justified the conclusion reached by the Circuit Court as to the facts."

From these statements, the following facts will be noted: (1) While the bill alleged that Gruetter & Joers, the assignees, were pecuniarily irresponsible, no finding to that effect was made in the Circuit Court, but that court held the transfer invalid at suit of Gruetter & Joers, upon their

cross-bill, for misrepresentations made to them as to the condition of the bank; (2) the Circuit Court of Appeals held that Gruetter & Joers, for reasons of practice purely, were not entitled to relief against Stuart upon their cross-bill, and directed a new decree finding the transfer fraudulent and void as against the receiver of the bank, and permitting the receiver to recover the amount of the assessment from Stuart; (3) the Circuit Court of Appeals was satisfied with the findings of fact in the Circuit Court and made no further findings.

But this is not all. The Circuit Court of Appeals was of opinion, as is stated expressly in the opinion of Mr. Circuit Judge Sanborn, that at the time the transfer was made to them Gruetter & Joers were solvent.

In the opinion, the court says:

"The question was not, therefore, whether the transferees were solvent or insolvent at the time of the transfer, but whether or not the individual liability of the transferees was as valuable as was that of the transferror. If it was not, the creditors were damaged and the fraud was actionable. The evidence leaves the question without doubt. Stuart was solvent, and amply able to pay the $15,000 in full, and at once. Gruetter & Joers were solvent before, but insolvent and unable to pay the liability after, the transfer. They paid to Stuart $18,000 of their property for his stock, which was worth nothing, and which imposed upon them a liability of $15,000. The operation decreased their assets $18,000 and increased their liabilities $15,000. It diminished the net value of their estate $33,000."

Stuart v. Hayden, 72 Fed. Rep. 402, 408.

It will be seen that the Circuit Court of Appeals considered the question to be whether the liability of the transferees was as valuable to creditors as that of the transferrer—whether they could respond as promptly and fully

as he. But this court ignored that question and rested the whole matter on the question of the intent with which the transfer was made. In the course of the opinion Mr. Justice Harlan says (p. 7):

"The *principal inquiry in this case is whether Stuart transferred his stock to Gruetter & Joers in order to escape the liability imposed by statute upon shareholders of national banking associations. His contention is that if the transfer was absolute and to persons who were at the time solvent* and able to respond to an assessment upon the shares, the motive with which the transfer was made is of no consequence.

"This construction of the statute seems to find some support in the general language used in a few cases. But it will be found upon examination that those cases were dealt with upon the basis that the facts therein showed not only an intent upon the part of the shareholder to escape liability by transferring his stock, but that the transfer was either colorable or to a person who was financially irresponsible at the time of such transfer. There is no case in which this court has held that the intent with which the shareholder got rid of his stock was of no consequence; certainly, no case in which the intent was held to be immaterial, when coupled with knowledge or reasonable belief upon the part of the transferrer that the bank was insolvent or in a failing condition."

Again (p. 8):

"The safety of a national banking association, so far as its creditors are concerned, depends largely upon the security given by the statutory provision entitling creditors to look to the individual liability of shareholders, including the liability of the estates and funds in the hands of executors, guardians and trustees holding shares of national bank stock. Sec. 5152. One who holds such shares—the bank being at the time insolvent—*cannot escape the individual liability imposed by the statute by transferring his stock with intent simply to avoid that liability, knowing or having reason to believe, at the time*

of the transfer on the books of the bank, Richmond v. Irons, 121 U. S. 27, 58, *that it is insolvent or about to fail. A transfer with such intent and under such circumstances, is a fraud upon the creditors of the bank, and may be treated by the receiver as inoperative between the transferrer and himself, and the former held liable as a shareholder wihout reference to the financial condition of the transferee.* The right of creditors of a national bank to look to the individual liability of shareholders, to the extent indicated by the statute, for its contracts, debts and engagements, attaches when the bank becomes insolvent, and the shareholder cannot, by transferring his stock, require creditors to surrender this security as to him, and compel the receiver and creditors to look to the person to whom his stock has been transferred. This court has said that 'the individual liability of the stockholders is an essential element in the contract by which the stockholders became members of the corporation. It is voluntarily entered into by subscribing for and accepting shares of stock. Its obligation becomes a part of every contract, debt and engagement of the bank itself, as much so as if they were made directly by the stockholder instead of by the corporation. There is nothing in the statute to indicate that the obligation arising upon these undertakings and promises should not have the same force and effect, and be as binding in all respects, as any other contracts of the individual stockholders.' *Richmond v. Irons*, 121 U. S. 27, 55, 56. If the bank be solvent at the time of the transfer, that is, able to meet its existing contracts, debts and engagements, the motive with which the transfer is made is, of course, immaterial. *But if the bank be insolvent, the receiver may, at least, without suing the transferee and litigating the question of his liability, look to those shareholders who, knowing or having reason to know, at the time, that the bank was insolvent, got rid of their stock in order to escape the individual liability to which the statute subjected them.*"

But, it is said, in *Earle v. Carson*, 188 U. S. 42, the opinion in *Stuart v. Hayden*, and the language we have quoted therefrom has been qualified and explained. The so-called

explanation of the opinion in *Stuart v. Hayden* by the opinion in *Earle v. Carson*, relates only to a remark on p. 9 of the opinion in the former case in which the question of the effect of a transfer to an irresponsible person without knowledge of insolvency was expressly saved. It does not relate to, and the court did not have before it and did not refer to, the portions of the opinion in *Stuart v. Hayden* upon which we rely. In *Earle v. Carson*, the fact of insolvency was unknown to the transferrer and the transferrer was not chargeable with notice of such fact. The questions in that case were (1) whether insolvency of the bank, unknown to the transferrer, would preclude assignment of stock in a bank which was a going concern, (2) whether insolvency of the transferee, unknown to the seller, would render void a *bona fide* sale in ignorance of insolvency of the bank. The effect of the decision is clearly to adhere to what was laid down in *Stuart v. Hayden*, namely, that known insolvency of the bank and intent to avoid the impending double liability are the controlling and the only necessary elements. After an elaborate review of the authorities, this court, through Mr. Justice White, says of *Stuart v. Hayden* (p. 53):

"The question presented for decision was, whether Stuart continued liable despite the transfer made to Gruetter & Joers. The court elaborately stated the facts, directed attention to the finding by the court below that at the time of the sale the bank was absolutely insolvent, *and proceeded to enforce the liability against Stuart solely because, being a director of the bank and a member of its finance committee, he had knowledge of the insolvency, and therefore the sale was in bad faith.*"

In other words, in *Earle v. Carson*, this court, reviewing its opinion in *Stuart v Hayden*, expressly laid down that the *sole ground* of Stuart's liability in that case was the bad faith of the transfer, that is, the purpose and intent

of avoiding the impending double liability, which dictated the sale.

Indeed this court has always made known insolvency of the corporation and intent to avoid liability upon the stock the controlling elements.

In *National Bank v. Case*, 99 U. S. 632, in an opinion by Mr. Justice Strong, the court says:

"A transfer for the mere purpose of avoiding his liability to the company or its creditors, is fraudulent and void and he remains liable."

In *Bowden v. Johnson*, 107 U. S. 251, the transfer was made, with knowledge of insolvency, to an irresponsible person. Hence all the three elements contended for by appellees were present. But the court considered that the irresponsibility of the transferee was rather a ground for finding bad faith in the transfer than a substantive element in avoiding the sale. Among other things, the opinion, by Mr. Justice Blatchford, says (p. 261):

"As such shareholder he become subject to the individual liability prescribed by the statute. This liability attached to him until, without fraud as against the creditors of the bank, for whose protection the liability was imposed, he should relieve himself from it. He could do so by a *bona fide* transfer of the stock."

We submit, therefore, that the prior decisions of this court have settled the point in controversy and have established that a sale of stock in a national bank, while it is insolvent, with notice of its insolvency, made with the intention and for the purpose of escaping the impending double liability, is ineffectual as against creditors, represented by the receiver, and that upon such facts, without anything further, the transferrer is liable for the assessment imposed by the comptroller.

II.

Under a proper construction of the National Banking Act, Dewey's estate should be held for the full assessment on 105 shares, upon the facts found. The purpose of the statutory provision as to sale of the stock is to permit sale of stock in a solvent bank, not to permit evasion of liability upon stock in a bank known to be insolvent, and the statute should be construed accordingly.

We contend that the prior decisions of this court have foreclosed the point here in controversy and have settled the construction to be given to the provisions of the National Banking Act, so far as they affect this cause. Apart from such decisions, however, we submit that the proposition laid down in *Stuart v. Hayden,* namely, that a transfer of shares made while a bank is insolvent, with knowledge of its insolvency, and for the purpose of avoiding liability, does not relieve from the liability, without regard to the solvency or insolvency of the transferees, is a sound and proper construction of the statute.

The National Banking Act, so far as material to this cause, provides as follows:

"The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; * * *"

U. S. Comp. Stat. 1901, sec. 5151.

"The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed

personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies or securities of the existing creditors of the association shall be impaired."

U. S. Comp. Stat. 1901, sec. 5139.

It goes without saying that the latter section must be construed in view of the former, and that both together must be given a reasonable construction to effectuate the intention of congress in enacting the statute and providing the system of national banks. While it was undoubtedly the intention of Congress to make shares of stock in national banks saleable, the same as any other stock, this was by no means the chief point to which the legislative intention was directed. It was necessary to interest capitalists in such banks in order to insure that they would be organized and that persons of means would subscribe for or purchase shares. To this end the ordinary provisions as to saleability were necessary, and these, and no more than these, Congress inserted in the act. But, much more than this, it was of the highest importance to create general public confidence in these institutions and to make them so secure that the people at large would patronize them and deal with them and thus insure their success. Hence the most important features of the act provide a series of protections for depositors, among which, is the statutory liability of stockholders here in question. Taking the act as a whole, this purpose to provide safe and sound institutions, worthy of public confidence, is so manifest, that it must be regarded as its leading idea, to which, so far as they may conflict, the purpose to make the shares saleable must be regarded

as subordinate. In the light of this purpose, the construction to be given to sec. 5139 is clear. The section says that the transferee shall succeed to the rights and liabilities of the prior holder. It does not say, however, that the liability of the prior holder shall thereby be released absolutely and at all events. How far and when it shall so operate, is a question to be determined, in view of all the provisions of the act and its intent and purpose, according to the general rules of construction. If the words of section 5139 were taken literally, indeed, they might lead to the absurd conclusion that any transfer, no matter to whom made and with what motive, would pass the liability and relieve the prior holders. In *National Bank v. Case*, 99 U. S. 628, this court held that such a construction could not be followed and that, at least, the English doctrine that the transfer must be "out and out"—*i. e.*, must be actual, and not merely colorable, —was to be applied in interpreting the statute. And the court indicated that the more stringent American doctrine, which denies effect to a transfer made with knowledge of existing insolvency and in order to escape liability, should be applied in construing this provision. In *Rowden v. Johnson*, 107 U. S. 251, after pointing out the limitation upon the general right of transfer provided for by section 5139, which is established in *National Bank v. Case*, the court adds that "there is nothing in the statute excluding as another limit" the American doctrine. What, then, is the further limitation, beyond that established in *National Bank v. Case*, which, not excluded by the words of section 5139, a due regard for the remainder of the statute and for the objects and purposes of the act as a whole requires us to impose? We submit that it is to be found in the distinction between sales and transfers made in good faith without knowledge of insolvency and not in contemplation of threatened liability, on the one hand, and transfers made with knowledge of insolv-

ency in order to evade liability, upon the other hand—in other words, that *Stuart v. Hayden* lays down the rule which a sound construction of the act requires.

All solvent persons are not, by reason merely of their solvency, of equal value to creditors and depositors as security. As Mr. Circuit Judge Sanborn puts it in *Stuart v. Hayden*, 72 Fed. Rep. 402, 408, the liability of one solvent person may not be "as valuable" as that of another. And this difference in value is especially marked as between transfers of stock in the ordinary course of business and transfers made solely to avoid stockholder's liability. In the former case, the shares almost invariably pass from one business man to another; from one man of means, making a substantial investment, to another. One responsible person—not merely solvent, but abundantly able to answer ordinary demands—is substituted for another. In the other case, no one but a speculator or a man of straw can be found to assume the risk. He may be conventionally solvent. He may be able to make a showing of solvency. But when the time for realizing upon his liability comes around, he invariably escapes. He was chosen for that reason. No one whose liability to creditors and depositors is of value will be transferee in a sale made with knowledge of insolvency to avoid liability. If such a person should chance to be caught in such a transfer, he will prove, like the transferees in *Stuart v. Hayden*, to have been deceived into making the purchase by false representations as to the condition of the institution, and will immediately seek to avoid the sale for fraud. It is self-evident that no one, whose liability is "of value" to creditors and depositors, will assume and pay for a substantial certainty of liability upon stock in an insolvent bank, which the original holder is seeking to avoid. The fact that in almost every reported case where a transfer of stock has been made with knowledge of insolvency to avoid

stockholder's liability the transferees have been insolvent, speaks for itself. The mere fact, then, that the transferee may be able to make some show of solvency does not meet the requirements of the situation nor the policy of the statute.

This court has established that the terms of section 5139 do not relieve the stockholder of his liability upon transfer of his stock, even when there is an out and out transfer, but that there are other and further limitations. The question is, how far do these limitations go? Do they preclude relief from liability where the transfer is made for the purpose of escaping liability in view of known insolvency of the bank, or are they more narrow, precluding such result only where, in addition, the transferee is insolvent? We submit that a consideration of the purpose and object of the act and of its several provisions leads to the conclusion that the word *transfer* in section 5139 means *transfer in good faith;* that *good faith*, in this connection, means *that good faith which inheres in the ordinary sale of stocks and securities in the usual course of business*, and that a transfer made in view of known insolvency, with a purpose of avoiding liability, is the sort of transfer excluded. The transferee may be insolvent. If so, the more reason for holding the transfer to be made in bad faith. He may be nominally solvent. But that does not alter the fact that the transfer to him is not one such as the statute contemplates—namely, a transfer in the ordinary course of business dealing, in good faith.

The liability of a stockholder in a national bank is contractual in its nature.

Richmond v. Irons, 121 U. S. 27.
Concord Nat. Bank v. Hawkins, 174 U. S. 365.
Whitman v. Oxford Nat. Bank, 176 U. S. 559, 565.

"It is voluntarily entered into by subscribing for and accepting shares of stock. Its obligation becomes a part of every contract, debt, and engagement of the bank itself, as much so as if they were made directly by the stockholder instead of by the corporation."

Stuart v. Hayden, 169 U. S. 1, 8.

The statute permits this contractual liability to be divested and transferred to another. But the liability, being for the benefit of creditors, and in some sort, as this court has pointed out, a direct relation to them, ought to be guarded carefully in the interest of creditors, and only a transfer which meets the true purpose of section 5139, namely, a transfer of the ordinary sort, in good faith, in due course of trade, should be allowed that effect. To allow a stockholder to purposely and intentionally divest himself of this liability with knowledge of the insolvency for which it was provided as a safeguard, and solely in order to avoid that liability, is to deprive this statutory protection of a very substantial part of its efficiency.

If the purpose of section 5139 is, as we submit it is, to permit full and free sale of stock in a solvent bank, not to permit evasion of liability upon stock in a bank known to be insolvent, we may well go further and contend, although not necessary to sustain our position in the case at bar, that no transfer, after the bank is insolvent *and the stockholder knows it*, will divest the statutory liability. Section 5210 provides that a list of stockholders shall be kept for the inspection of the creditors, so that they may know to whom they will be able to look for payment of their claims in case of insolvency of the bank. The creditor knows that the stockholders may change from time to time, but if the security provided by the statute is to mean anything, he must feel assured that no transfers of this liability may be made after stockholders become aware of

the bank's insolvency, and that those who were stockholders in time of prosperity may not vanish at the prospect of loss and leave doubtful substitutes in their places. The list of stockholders provided for in section 5210 is to be kept at the bank subject to the inspection of creditors. But of what avail is this list if it is only a fair-weather list—to be used as a trap rather than as a security—a list of those on whose credit the public are invited to do business with the bank, but not of those who will respond to the stockholders' liability in case the bank becomes insolvent; *since any stockholder upon the list may, when he discovers approaching failure, divest himself of liability by a transfer, provided only the assignees cannot be proved to be insolvent?*

The question whether or not any transfer may be made, after the bank is known to be insolvent, has perhaps never been directly passed on by this court; through *Stuart v. Hayden* comes very near so doing. It is worth inquiring, however, whether, after the bank is known to be insolvent, and its failure is a question of time only, there may be, in any just sense, a transfer of the *stock*, as contemplated by section 5139. The *stock* in such a case is but a name. It has no real value. The actual, substantial transaction is not a transfer of stock, but a transfer of liability; *and the stockholder who transfers his stock under such circumstances knows he is transferring and intends to transfer his liability and nothing more.* The case of *Earle v. Carson*, 188 U. S. 42, does not conflict with this position in any way. There the crucial point was that the stockholder did not know of the insolvency of the bank.

This court has held expressly, indeed, that insolvency of a national bank changes at once the relation between stockholders and creditors.

McDonald v. Williams, 174 U. S. 397.

There an action was brought by the receiver of a national bank to recover a dividend paid to a stockholder out of the capital of a bank which at the time was insolvent. The question was whether the status of the parties was affected by the solvency or insolvency of the bank. Mr. Justice Peckham, in the opinion of the court, said:

"It must be admitted that the law does create a distinction between solvency and insolvency, and that from the moment when the latter condition is established, the legality of acts thereafter performed will be decided by very different principles than in a case of solvency."

It is true the court was here speaking of an act of the corporation. But we submit that the liability of stockholders is in substance and in equity an asset of the corporation, when it becomes insolvent, and that the same principles which limit the power of the officers to dispose of the capital and assets of an insolvent bank, when they know it to be insolvent, preclude them from disposing of their liability upon their stock, designed for the protection of creditors. When the bank becomes insolvent and they know it, it ceases to be theirs to dispose of. A trust attaches to it for creditors which they cannot divest by a transfer intended merely to escape liability.

III.

The American rule as to the effect of transfers of stock in an insolvent corporation upon statutory stockholder's liability, is that such transfers will only divest the liability where made both in good faith and to solvent transferees, and that if made for the purpose and with the intent of avoiding liability upon the stock of a corporation known to be insolvent, the assignor remains liable.

In *National Bank v. Case* and *Bowden v. Johnson*, this court indicated that the so-called American rule as to the effect of a transfer of stock upon the liability of the assignor was to be regarded as furnishing the proper construction of section 5139. It becomes material, therefore, to enquire what this American rule is, and what are the elements required by this rule in order to hold the assignor upon the statutory stockholder's liability. The question in this cause is primarily as to the proper construction to be given to the National Banking Act and the application of the decision in *Stuart v. Hayden*. Upon these points, however, the analogy of the rule applied by the courts of the country generally upon the subject of divesting stockholder's liability by transfer of the stock cannot fail to be fruitful.

The general rule is, undoubtedly, that a stockholder may freely transfer his shares to any person capable of acquiring them and thus substitute the latter as a member of the corporation in his stead. This rule, however, which permits a transfer of a liability, without the concurrence of those for whose benefit the liability exists, is anomalous, and rests upon special reasons, which are the measure of its extent. These reasons have been stated thus:

"Still, this apparent anomaly, this right to transfer a liability, from one point of view, usually attaches to the interest of shareholders in a corporation. It has been said to be a special partnership, in which the shareholders conduct business and own property in a fictitious name, and in which there is no *delictus personae*, and therefore in which the partners may sell, and by so doing be relieved of all liability save such as the statute or the charter may provide shall continue."

Temple, J., in *Nat. Carriage Mfg. Co. v. Story & Isham Commercial Co.*, 111 Cal. 537.

When, therefore, by insolvency and attaching of the statutory liability, there becomes a *delictus personae*, the reason ceases to apply. Then, the contingent liability having become an actual liability, the stockholder, who knows of the insolvency of the corporation, cannot avoid such liability by a transfer made for that purpose. This is the so-called American rule. The English authorities give the transfer the effect of divesting liability in case it is an "out and out" transfer, without regard to motive or to the responsibility of the transferee. But the American authorities, from the beginning, have insisted that the transfer must not only be "out and out," but it must be in good faith.

The ordinary run of transfers made to avoid liability are, for obvious reasons, made to insolvent or irresponsible transferees. Hence many text writers and many courts have coupled the two propositions—intent to avoid liability and insolvency of the transferees—in writing of or discussing this subject. But it does not follow from this not unnatural juxtaposition of these propositions in the language of courts dealing with the general run of cases, in which both elements exist, that both of these elements are essential in order to hold the transferrer, and must co-exist with insolvency of the corporation before he can be held liable. On the contrary, a detailed examination of the long list of cases in which this question has been before the courts of this country, will show these significant facts:

(1.) In substantially every case in which courts have held that a transfer of stock would divest the liability, they have qualified this statement by the proviso that the transfer must be in good faith.

(2.) In those cases in which intent to evade liability and insolvency on the part of the transferees co-existed,

the courts have uniformly insisted upon the former as the material and important element.

(3.) The decision of the majority of the Circuit Court of Appeals in the case at bar is the only one to be found in the books in which it is held that the three elements *must* co-exist.

(4.) It has been held in many cases, by courts of high authority, that there need not be both intent to escape liability and insolvency of the transferees, but that one of these, coupled with known insolvency of the corporation, is enough.

1. While by no means conclusive, it must be admitted to be a very suggestive circumstance, that in substantially every case in which courts have held that a transfer of stock would divest the stockholder's liability, they have qualified this statement by the proviso that the transfer must be in good faith. It would occupy too much space and would subserve no useful purpose to set out all of these cases. But a number of representative examples may be of service.

Moss v. Oakley, 2 Hill (N. Y.) 265.
Tucker v. Gilman, 121 N. Y. 189.
Rochester & Kettle Falls Land Co. v. Raymond, 158 N. Y. 576.
Middletown Bank v. Magill, 33 Conn. 28, 70.
Aultman's Appeal, 98 Pa. St. 505, 517.
Harpold v. Strobart, 46 Ohio St. 397, 406.
Cole v. Adams, 19 Tex. Civ. App. 507.
Stewart v. Walla Walla Printing & Publishing Co., 1 Wash. 521.

In *Moss v. Oakley*, after laying down the general rule as to the effect of a transfer, the court says:

"It is true that a member who makes a fraudulent

transfer of his shares *for the purpose of avoiding his liability*, may still be treated as a stockholder."

In *Tucker v. Gilman*, the court says:

"A transfer of stock, *made in good faith*, and at a time when the corporation is a going and solvent concern, and which is entered upon the books, would certainly relieve the transferrer from all the responsibilities which attached to him as a stockholder."

In *Rochester & Kettle Falls Land Co. v. Raymond* it is said:

"We are of the opinion that, in the absence of special provisions to the contrary, * * * an original subscriber to the stock of such a corporation can transfer his stock to another, and, *if made in good faith*, his liability as a stockholder ceases, and the transferee will be substituted in his place, with the same rights and liabilities as the original holder."

In *Middletown Bank v. Magill*, the court says:

"But no principle is better settled than that a conveyance made with intention to defraud a creditor is void. If, then, the members dispose of their interests *with such intentions*, the creditors may treat them as members; and, of course, they will remain liable to the same extent that they would have been, had they made no such conveyance."

In *Harpold v. Strobart*, in construing a statute which imposed a partial liability even after transfer, the court said:

"We are of opinion that a stockholder who has, *in good faith*, sold and assigned his stock to one who becomes insolvent, is liable to creditors of the corporation for such portion only of the debts * * * etc."

In *Cole v. Adams*, the court says:

"We conclude the correct rule to be that a stockholder,

who transfers his stock in good faith and with no intention to defraud, while the corporation is solvent, and has the transfer entered upon the books of the corporation, is not liable either to the corporation or to its creditors for unpaid subscriptions to its stock."

In *Stewart v. Walla Walla Printing & Publishing Co.* the court says:

"The question of good faith, or *bona fides, is always important*, as we have already seen, and when this is determined in the affirmative, the transferee of stock steps into the place of the original holder in all particulars and the vendor is relieved of all liability."

These quotations might be continued indefinitely. But those given suffice to show the uniform understanding of the courts that the controlling question in such cases is the good faith of the transfer. Moreover, in cases where courts, having controversies before them in which the transfer was both in bad faith and to insolvent assignees, have coupled these ideas in passing upon this point, the same courts have in other cases pointed out that the one element alone, without the other, will suffice. Thus, compare

People's Home Savings Bank v. Rickard, 139 Cal. 285,

with

Welch v. Sargent, 127 Cal. 72.

Also see:

McLaren v. Franciscus, 43 Mo. 452.

Provident Savings Institution v. Jackson Place Skating & Bathing Rink, 52 Mo. 557.

2. Even in those cases in which intent to evade liability and irresponsibility or insolvency on the part of the transferees co-existed, the courts have uniformly insisted upon the former as the material and important element.

Schofield v. Twining, 127 Fed. Rep. 486.
Ward v. Joslin, 100 Fed Rep. 676.
Foster v. Lincoln, 79 Fed. Rep. 170.
Cox v. Montague, 78 Fed. Rep. 845.
Miller v. Great Republic Ins. Co., 50 Mo. 55.
Burt v. Real Estate Exchange, 175 Pa. St. 619.

In *National Carriage Mfg. Co. v. Story & Isham Commercial Co.*, 111 Cal. 537, after quoting a well-known text-writer, the court says:

"This author concludes that the American rule results from the trust-fund doctrine, and says courts of equity will not allow this portion of the fund to be frittered away by transfer to an insolvent for the purpose of escaping liability. He says, also, the intent, which is material, is the intent to escape liability. In this case that intent is avowed as the motive of the transfer by both the parties to it."

3. Although, because those facts usually concur, courts have often stated the rule to be that transfers with intent to avoid liability and to insolvent transferees are invalid, the case at bar is the sole case in which it is expressly decided that these elements must necessarily co-exist in order to hold the assignor. No cases holding to this effect are cited by the court, and we have found none.. The nearest approach to such a holding is to be found in some *dicta* in Magruder v. Colston, 44 Md. 349, where a pledgee sold pledged shares, as he clearly had a right to do, in order to realize his debt and escape stockhoder's liability. This, of course, was a sale in good faith. The cases in which these two propositions are coupled are all cases where the two facts co-existed and hence the point was not before the court for decision. If one will suffice, obviously both will have that result.

4. It has been held in many cases, by courts of high authority, that there need not be both intent to escape lia-

bility and insolvency of the transferees, but that one of these, coupled with known insolvency of the corporation will suffice.

These cases are of two types, those which hold the original stockholder liable upon proof of known insolvency of the corporation and insolvency of the transferees, alone, without regard to proof of the intent with which the transfer was made, and those which hold him liable by reason of the known insolvency of the corporation and intent to escape liability, alone, without regard to the financial condition of the transferees.

Cases of the first type are:

National Carriage Mfg. Co. v. Story & Isham Commercial Co., 111 Cal. 537.

Welch v. Sargent, 127 Cal. 72.

In the case first cited, the court says:

"So long as the corporation is solvent, there is ordinarily no restriction upon the right to transfer, but the American doctrine is that, after the corporation has become insolvent, and the stockholder knows this, and especially if the corporation has ceased to do business, a shareholder cannot transfer his stock to an insolvent or to an irresponsible person, so as to relieve himself from liability. And I do not find from the cases that it is necessary to find, in addition to the above facts, that there was an actual intent to defraud."

In *Welch v. Sargent*, this question, which was not squarely involved in the former case, became the turning point of the cause as to one of the defendants, and the court quoted with approval the language above set out and made it the ground of decision.

Of course, a transfer to an insolvent with knowledge of insolvency of the corporation is in and of itself a fraud,

and to require proof or finding of fraudulent intent in intentionally doing what could be in its very nature nothing but a fraud, would be ridiculous.

Cases like *Anderson v. Philadelphia Warehouse Co.*, 111 U. S. 479, where pledgees, seeking to protect their claims, put the stock in the name of irresponsible trustees, are quite different. Such a transaction is no fraud, since the pledgee is merely interested to the extent of security. These cases do not conflict with those cited.

Cases of the second type, holding that a transfer with knowledge of insolvency of the corporation, made for the purpose and with the intent to escape the impending stockholder's liability, will not divest such liability, without regard to the financial status of the transferees, are:

Marcy v. Clark, 17 Mass. 330.
McLaren v. Franciscus, 43 Mo. 452.
Provident Savings Institution v. Jackson Place Skating & Bathing Rink, 52 Mo. 557.
Stewart v. Walla Walla Printing & Publishing Co., 1 Wash. 521.
Sykes v. Holloway, 81 Fed. Rep. 432.

In *Marcy v. Clark* the question was raised squarely, since the trial court directed the jury to find for the plaintiff in case they found that the defendant "made sale of his share with the fraudulent intent of preventing the creditors of the company from recovering their just demands against them, and to avoid the levy of said executions upon his property for the satisfaction of the same." (17 Mass. 330, 331). The court said (p. 335):

"We cannot doubt, then, that a transfer of an interest in the stock of such corporations, *not bona fide, but for the purpose of defeating the creditors of the company*, is fraudulent and void. Otherwise the wholesome provision

of the statute for the security of creditors would be unavailing at the very time, and in the very circumstances, in which it was intended to operate."

In *McLaren v. Franciscus*, the court says:

"The members of a corporation, therefore, who would be liable, if they continued members, to the creditors of the corporation, may still be treated as members if they have disposed of their interest to an insolvent, *or with the view of exonerating themselves from their personal liability*."

This statement is repeated and approved in *Provident Savings Institution v. Jackson Place Skating & Bathing Rink*, 52 Mo. 557, 558.

In *Stewart v. Walla Walla Printing & Publishing Co.* the court says:

"The main proposition in the case, and the only one entitled to serious consideration, is the contention by appellee in the effort to hold the original subscriber for calls or assessments upon stock he has transferred, and to hold him liable for this, although he had in good faith transferred his stock to another before thus called upon. We use the term 'in good faith' because this test, in our judgment, practically determines the question. Had he made this transfer in fraud, or the like, *or after the call or assessment had been made, and to escape it*, the case would be different; but the square issue is presented in the claim that one having taken stock in a company remains subject to the obligations thereby incurred, regardless of a sale of his stock."

We submit that a review of the authorities will demonstrate that the doctrine of the court below that the co-existence of three conditions is required to hold the assignor of shares in an insolvent corporation upon his stockholder's liability is without any real support. In text books the three supposed conditions are often joined, as they are *obiter* in the cases. But because in most cases *they co-*

exist, it does not follow that such *coexistence* is an *absolute prerequisite* of liability on the part of the assignor. Nor have the courts so held. Where the question was squarely presented, a transfer with *knowledge of insolvency* of the corporation for the purpose of avoiding the consequent liability has never yet been upheld for want of some further condition of invalidity.

IV.

Whether or not the transferees in the case at bar are affirmatively shown to be absolutely insolvent, it clearly appears that their financial status was very doubtful and that their liability was and is far less valuable to creditors than that of their assignor.

In the Circuit Court of Appeals it was held that there was a failure to prove insolvency of the several transferees. Whether or not there was a failure to show absolute insolvency of the transferees, the testimony, at the least, puts their financial status in great doubt, and shows clearly that their liability was and is far less valuable to creditors than that of the stockholder who sought to put them in his place.

Twenty of the eighty shares in dispute were transferred to the son and the brother of the witness Charles Jouvenat. His evidence will be found on page 227 of the printed record. He conducted the transaction, in which the 20 shares were transferred, himself (227). In the first transaction, for 10 shares, he was the real party in interest, but took the stock in his son's name (229). The stock was traded to him for Chicago boom lots, located near the World's Fair grounds, upon which there was a mortgage of $4,500. The defendant Jewett assumed the encumbrance (229) and Jouvenat took the stock for

the balance of the nominal purchase price. *The property had been sold under foreclosure at the time of the trade*, and a Master's certificate of sale was outstanding (229). *He had the stock transferred directly to his son so that "if an assessment had been made on the stock, I would not have had to pay it, because I never took the stock"* (228). His son, in whose name the stock was taken, *"is working on a salary, making a living; that is all"* (230). The witness, who claims to have been the real owner of the stock, lost all his property "since the panic of 1893, since the World's Fair" (230). The other 10 shares went to Emile Jouvenat, brother of the witness (227). The consideration of the trade was $1,906, Jewett (for Dewey) assuming a mortgage of $900 on the three lots traded and giving the stock for the remainder (227). The lots were subject to unpaid taxes at the time (229). Emile Jouvenat, the transferee of the stock was insolvent. *"He could not pay the assessment"* (230).

From this testimony it is evident that the transferees were not responsible parties, even if it be said that Charles Jouvenat was at that time the owner of some property. As he claims, he had the 10 shares put in his son's name to escape liability; and thus the creditors were getting a lawsuit against a person of doubtful solvency,—a speculator and trader in boom lots who became insolvent confessedly soon after,—for security, in place of the asserted liability of a responsible stockholder.

Thirty of the 80 shares stood, when the bank failed, in the name of one C. C. Hatcher. These shares were transferred by Jewett to one Killough and by Killough to J. G. Hatcher (Jewett's testimony, p. 177, Killough's testimony, p. 231). Killough traded lots, which were subject to a mortgage of $1,500, for the stock and $3,750 cash (232). On examination in chief he said he could

have paid an assessment on the 30 shares, but on cross examination (232) admits that he could not have done so. The lots he traded were not built upon (232), and as *he could not pay the mortgage of $1,500 upon them* and had to trade them off, it is pretty clear that the last answer tells the truth. As to Hatcher, Killough says he "was regarded as a man of wealth" (231). J. G. Hatcher testified to one C. C. Hatcher, as to whom Killough is silent. The main fact, however, is that Killough, to whom Jewett transferred the 30 shares for Dewey, was not responsible. So long as Killough was not responsible, if advantage may be taken of the assumed responsibility of his transferee,—which is very doubtful,—the burden was upon Dewey to establish that fact.

People's Home Sav. Bank v. Rickard, 139 Cal. 285.

This burden is not met by Killough's sweeping statement as to how Hatcher was "regarded," especially in view of the immediate transfer by him to C. C. Hatcher.

Another 20 shares of the 80 in controversy, stood in the name of A. C. Kendig when the bank failed. These shares were transferred by Jewett (for Dewey) to one Levi Eberhart, and by Eberhart to Kendig (3). Levi Eberhart was represented in the matter by his son. His testimony will be found on page 152 of the printed record, and that of his son on page 148. The son says: "At the first sale there was traded five acres in Chicago Lawn, Eberhart, Robinson & Good's Subdivision. * * * The consideration of the sale was $12,000. There was an incumbrance on it of $5,000 which was to be assumed; there was $2,000 in cash to be paid, $3,500 of the bank stock given, and 160 acres of land in Kansas for $1,500. * * * *The chief inducement for making that trade on our part was to get rid of the property. It had an incumbrance on it of $5,000, and the parties interested, outside of my*

father, had hard work in paying the interest. I never made any inquiries as to this bank stock" (148-149). *One of these parties who "had hard work in paying the interest" was the transferee Kendig,* (who was interested in the transaction with Eberhart (148), and took one-third of the stock (149). He is a photographer (150). "In the second trade," Eberhart continues (p. 149), "there was 31 lots adjoining this block that I spoke of, south of it, with an incumbrance of $4,000. * * * *The principal inducement was to get rid of the encumbrance."*

Levi Eberhart, to whom the shares were transferred, testifies (150) that the principal reason in trading the lots for the stock was to get rid of the encumbrance on them. He says further when asked what value he placed on the stock: "Well, sir, *I don't know that we placed any special value on it." On being asked whether he could have paid an assessment on the stock,* he answered (153): *"I don't think I could."*

The remaining ten of the 80 shares in question stood, when the bank failed, in the names of William Mathewson (6 shares) and A. C. Park (4 shares). Mathewson and Park were transferees of J. W. Jouvenat, the son of the witness Charles Jouvenat (3). As to his solvency, his father says (230): "My son is *working for a salary, making a living; that is all."* That the father put the stock in the son's name to avoid any possible assessment (228) speaks for itself. As to his own financial status, the father says (230): "I am not liable for a stock assessment, and if I was, I couldn't pay it."

To sum up: J. W. Jouvenat (10 shares) was "making a living, that is all"; his father, who was the real party in the trade, was not able to pay an incumbrance on the land traded for the stock, and it had been sold under

decree of foreclosure. At the time his testimony was taken, he could not have paid an assessment.

Emile Jouvenat (10 shares), could not pay an encumbrance of $900 on the lots traded for the stock, and his taxes were in arrears. The testimony of his brother is that he could not respond for an assessment.

C. C. Hatcher (30 shares) is assignee of J. G. Hatcher, assignee of Killough, to whom the stock was transferred by Jewett. Killough traded off vacant lots for the stock to get rid of a mortgage of $1,500 he could not pay, and admits finally that he could not have paid an assessment.

Kendig is a photographer who could not keep up interest on the encumbrances on the land traded for the stock, and his assignor, Eberhart, who took from Jewett, admits he was embarrassed at the time and could not have paid an assessment.

Mathewson (6 shares) and Park (4 shares) are transferees of J. W. Jouvenat who is "making a living."

Bearing in mind that the question is as to the responsibility of the transferees from Dewey, and that he had the burden to show that subsequent transferees were responsible, if any advantage can accrue to him from that fact, we submit that the showing of insolvency on the part of the transferees is as strong as may reasonably be asked. Even if it does not conclusively establish complete insolvency, it shows that the liability of the transferees was of no value to the creditors in comparison with that of Dewey for which attempt is made to substitute it.

The words of Mr. Circuit Judge Sanborn in *Stuart v. Hayden* are peculiarly applicable:

"The question was not, therefore, whether the trans-

ferees were solvent or insolvent at the time of the transfer, but *whether or not the individual liability of the transferees was as valuable as was that of the transferrer.*"

V.

The transfers being fraudulent and invalid when made, the assignor remained liable down to the failure, and should be held for the full amount of the assessment.

The Circuit Court considered that Dewey's liability was for whatever deficit would have existed if the bank had closed when he transferred his stock, not for the actual deficit which exists. But the actual decision went beyond that, since it excluded all of the then creditors who had been satisfied subsequently, and admitted none of the subsequent creditors. Such a holding is obviously fallacious, in that the creditors who had ceased to be such when the bank closed, had simply been paid out of the moneys of those who were such at the time of suspension. Nothing happened in the two years between the transfer and the failure to precipitate the failure. It was the necessary and inevitable result of the condition of the bank when Dewey sold his stock. That one crop of creditors had paid off a preceding and taken their places in the list of claimants can have no substantial bearing on the merits of such a situation.

But the position taken by the Circuit Court was unsound. The liability is for the "contracts, debts, and engagements of the *bank*," not for the claims of any particular creditors, and such is the express language of section 5151. Where a transfer is made in good faith, but, by reason of statutory provisions, the courts are not able to give it entire effect in divesting liability, restriction of

the liability to debts existing at the time is proper. But where the transfer is fraudulent and voidable, and is avoided as such, there is neither principle nor authority for such a limitation. In such case, it is as if there had been no transfer, and the responsibility of the stockholder must be judged accordingly.

The cases holding such transfers "void" are legion, and this court has repeatedly used such language.

In *Earle v. Carson*, 188 U. S. 42, they are said to be "void."

In *Stuart v. Hayden*, 169 U. S. 1, the word used is "inoperative."

In *Bowden v. Johnson*, 107 U. S. 251, the word "void" is used.

In *National Bank v. Case*, 99 U. S. 632, it is said that the transfer is "*void, and he remains still liable.*"

Liable to what? The only answer can be, to assessment the same as if he had made no transfer. That assessment would be, of course, for all debts of the bank at the time when assessment became necessary. Cases where transfers in good faith still leave the assignor liable, under statutory provisions, are without bearing upon this point. Such transfers are valid and effectual. The courts do not set them aside. But, recognizing their effect as transfers, the courts find themselves obliged to reach some compromise between the statutory obligation to respond to existing creditors at all events and the stockholder's right of transfer. No such necessity exists under the National Banking Act.

We submit that the decree of the Circuit Court of Appeals is wrong because (1) it is contrary to the decision

of this court in *Stuart v. Hayden*, (2) it is contrary to a proper construction of the National Banking Act, (3) it is contrary to the rule established by the American courts as to the effect of transfers of stock with knowledge of insolvency of the corporation in order to escape liability, (4) it is based on an erroneous finding as to the ability of the transferees of the stock to respond for stockholders' liability. We therefore submit that the decree should be reversed and that a decree should be directed for the full assessment on 105 shares.

F. M. HALL,
ROSCOE POUND, AND
E. E. PRUSSING,
Solicitors for Appellant.

FILE COPY.

PREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 220.

Office Supreme Court U. S.
FILED
APR 9 1906
JAMES H. McKENNEY,
Clerk.

N W. McDONALD, AS RECEIVER OF THE FIRST NATIONAL BANK OF ORLEANS, NEBRASKA,
Appellant,

v.

UNCEY DEWEY AND CHARLES T. KILLEN, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF CHARLES P. DEWEY, DECEASED,
Appellees.

REPLY BRIEF OF APPELLANT.

F. M. HALL,
ROSCOE POUND,
E. E. PRUSSING,
Solicitors for Appellant,

MAIL JOURNAL CO., Legal Blank Manufacturers and Printers, Lincoln, Neb.

Supreme Court of the United States.

OCTOBER TERM, 1905.

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JOHN W. McDONALD, AS RECEIVER OF THE FIRST NATIONAL BANK OF ORLEANS, NEBRASKA,
Appellant,
v.
CHAUNCEY DEWEY AND CHARLES T. KILLEN, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF CHARLES P. DEWEY, DECEASED,
Appellees.

REPLY BRIEF OF APPELLANT.

F. M. HALL, ROSCOE POUND, E. E. PRUSSING, *Solicitors for Appellant.*

The cross-appeal of the appellees raises three points, namely, whether the bank was insolvent at the time of the transfers of stock; whether Dewey had actual notice that the bank was insolvent at the time he made the transfers; and whether Dewey's purpose in making the transfers was to avoid liability because of the known insolvency of the bank and the certainty that it would eventually go under.

I.

The bank was insolvent at the time of the transfers.

The Circuit Court expressly so found. At the beginning of the second paragraph on page 275, this finding appears and is clear and explicit. Moreover, the evidence on that point is convincing.

The First National Bank of Orleans was organized in 1885, with a capital stock of $50,000, as the successor of the Harlan County Bank, taking over all of its assets and assuming all of its liabilities. George W. Burton was the president of the bank and the owner of a large block of its stock from the day of its organization until its failure. A. E. Harvey was cashier of the bank until 1889. (A. E. Harvey's evidence, p. 117.)

J. A. Randall went to Orleans in 1889 and went to work for Burton & Harvey, who were not only running the bank, but were running in connection therewith a real estate and loan business. At the same time that Randall was working for Burton & Harvey, he kept the books of the bank. Randall became cashier of the bank in 1891 or 1892. He continued as cashier until July 1, 1895, when he resigned because he did not feel safe in occupying the position as cashier *because of the manner in which Mr. Burton was handling the funds of the bank for his own private use.* (Randall's evidence, pp. 9-64.)

In the fall of 1891, C. P. and A. B. Dewey and C. M. Hogg purchased 260 shares of stock in this bank, being a majority, for $26,000, from Burton & Harvey, sending to Burton & Harvey a draft for $10,268.63, and the balance of the purchase price was used in paying and discharging the obligations outstanding of Burton & Harvey. This

stock was divided among the three parties as follows: C. P. Dewey, 120 shares; A. B. Dewey, 120 shares; C. M. Hogg, 20 shares. March 8, 1892, C. P. Dewey sold to J. and G. Galbraith 10 shares of stock for $1,080 cash. April 23, 1892, C. P. Dewey sold to Charles McKenna, of Smithfield, Ohio, 5 shares for $550. (Randall's evidence, p. 180-1.) Thus at the time of the transfers, C. P. Dewey had 105 shares.

Following is a comparative statement showing condition of the bank March, 1893, and December, 1894: (C. P. Dewey's evidence, p. 219):

March 3, 1893.

Loans and discounts	$78,071 70
Deposits	71,216 21
Cash on hand	26,347 00

December 19, 1894.

Loans and discounts	$68,235 17
Deposits	39,522 19
Cash on hand	6,159 30

The per cent. of cash on hand to the deposits in the March 3 statement was 35 to 38 per cent. In the December 19 statement it was about 15 per cent. (C. P. Dewey's evidence, p. 219.)

December 17, 1896, deposits	$33,588 10
Cash on hand	3,585 78

When the bank failed, to-wit, May 20, 1897, it had assets as follows (Ex. 8, Trial balance, May 19, 1897, and P. O. Hedlund's evidence, pp. 1-23):

Cash in vaults	$102 03
In U. S. National Bank of Omaha	80 01
Banking house	13,260 14
Furniture and fixtures	2,433 09
Other real estate	4,560 88
Loans and discounts	65,838 42
U. S. bonds	12,500 00

Premiums	$265 25
Redemption fund	562 50
Total	$99,602 32

Out of these assets the receiver collected the following sums (Ex. 8, Trial Balance, May 19, 1897, and P. O. Hedlund's evidence, pp. 1-23):

Out of notes classed as good	$8988 45
Out of notes classed as doubtful	757 02
Out of notes classed as worthless	77 10
Balance in U. S. National	80 10
Redemption fund	560 00
Cash on hand	102 03
Real estate	1,813 14
Sale of balance all assets	300 00
Excess bonds over circulation	1,250 00
Total	$5,928 14
Realized out of	99,602 32

The deposits on this date were $32,785.20.

P. O. Hedlund, receiver, had lived in that section of the country for fifteen years, and was acquainted with practically all of the customers of the bank and the people to whom they had been loaning money. P. O. Hedlund says that after he was appointed receiver he examined thoroughly the bills receivable with a view to ascertaining the solvency of the makers and that he also traced the history of the bills receivable so as to know, in a general way, how long they had been in the bank, and he says that the bills receivable had not changed much as to amounts and persons during the three or four years prior to the failure of the bank; that the same notes, with interest added, made by the same parties, had continued from 1888 or 1889 without change down to the time of the closing of the bank. That he was personally acquainted with all makers of the large notes, and knew of their financial

standing and responsibility, and he gives it as his judgment that more than $50,000 of the paper that was held in the bank in 1894 was worthless and had been carried there through the years 1890, 1891, 1892, 1893 and 1894 up to the failure of the bank. (Hedlund's evidence, p. 105.)

Hedlund testifies further that the firm of Burton & Harvey was the principal debtor. They had been running a real estate and loan agency for many years in connection with the bank. Their indebtedness, one way or another, either directly or indirectly amounted to from $30,000 to $40,000. Then there was the Orleans College, that was carried for $1,000 that was worthless. Quite a number of men whose paper had been there for ten or fifteen years had notes amounting to between two and three thousand dollars. He was well acquainted with Burton and Harvey, had known them for many years, and was familiar with their financial condition, and testifies that they were insolvent in 1894. In order to avoid the excessive loans, Burton & Harvey, or George W. Burton and A. E. Harvey, carried loans in the names of various parties, to-wit, George W. Burton, A. E. Harvey, B. D. Mills, Mr. Hovey, who was Harvey's father-in-law, George W. Burton's wife, A. E. Harvey's wife, Mr. Burton's sister, Kirkpatrick, Neubauer, and J. A. Randall, and the Interstate Loan & Trust Company, which was owned entirely by Burton and Harvey. This concern had a note in the bank for $5,000 for six or seven years prior to the failure of the bank. The note of B. D. Mills was held by the bank as an accommodation note, for $2,000. The note of J. A. Randall was an accommodation note for Burton & Harvey, amounting to $2,900, and $1,000 that he had given for some stock in order that he might serve on the board of directors. All of these parties were insolvent and their notes were worthless, and all of their notes were in the bank at the time it failed. (Hedlund's evidence, pp. 105, 106, 107.)

It will thus be seen from the evidence thus far referred to that of the $50,000 capital of the bank, *it had $15,693.53 tied up in its building and fixtures, $4,560.88 in worthless real estate, and the balance was loaned to Burton & Harvey, directly or indirectly, not one dollar of which has ever been paid or could have been collected when the stock transfers were made.* (C. P. Dewey's evidence, p. 218.) All of this was true when Dewey transferred his stock.

During all the time that Burton & Harvey were owing the bank as set forth above, they were owing to C. P. and A. B. Dewey $22,000 and had conveyed to C. P. and A. B. Dewey practically everything they had for the purpose of securing it; and out of all of the securities that had been conveyed by Burton & Harvey to C. P. and A. B. Dewey to secure this $22,000 the latter only realized $4,000. A portion of the $22,000 that was loaned to Burton & Harvey consisted of advances from time to time by the Deweys to other creditors in the shape of interest payments on Burton & Harvey's indebtedness and was advanced for the purpose of keeping the creditors of Burton & Harvey from suing them and in that way embarrassing the bank. (C. P. Dewey's evidence, p. 218.)

A list of the notes held by the bank was furnished by J. A. Randall to C. P. Dewey from time to time. Such list was furnished by Randall to C. P. and A. B. Dewey January 14, 1894. This list of notes (C. P. Dewey's evidence, pp. 202-212) shows the

Note of George W. Burton for....	$829	50
and	4,168	00
M. F. Burton.....	5,000	00
A. H. Burton.....	1,149	80
and	542	00
A. E. Harvey.....	4,453	01
and	543	00
P. E. Hovey, Harvey's father-in-law	1,200	00
Interstate Loan & Trust Company	5,000	00

B. D. Mills	$2,000 00
H. Neubauer	1,387 15
J. A. Randall	2,900 60
and	1,000 00
S. B. Kirkpatrick and M. J. Kirkpatrick	1,387 50

This amounted to $32,539.96. In addition Burton had an overdraft of $7,000; and in addition to this, this list of notes showed that there were $4,000 in notes of various parties that had been due since 1891, $1,300 due since 1892, $4,280 due since 1893. On pages 53 to 56 of J. A. Randall's evidence there will be found a list of the bills receivable, amounts due the First National Bank of Orleans, Nebraska, December 1, 1894, and which remained in the bank at the time of its failure. The amount of notes that were in the bank at the time it failed as shown by this list is $64,123.66. Of this amount there were $56,297.56 of the same notes that were carried in the bank in December, 1894. The difference between the two amounts is the interest added between December, 1894, and May, 1897. No new loans were made by the bank during this interval except in the form of renewals of old notes. (Randall's evidence, p. 53.)

W. S. Morlan, a first-class attorney and business man, who had lived in and about Orleans for twenty years, and who had been actively engaged in the practice of law in that county, and who had an extensive acquaintance, examined this bank, in company with A. B. Dewey, in the early days of January, 1895, for the purpose of determining whether or not the bank was insolvent. At that time he examined all of the assets of the bank, and says that he was personally acquainted with nearly all the makers of the notes, and those that he did not know personally he advised himself about through inquiries from others, and he gave it as his unqualified opinion that the bank was, at that time, absolutely insolvent, and so advised A. B.

Dewey, and that he would be liable for an assessment of a hundred cents on the dollar on his stock. Thereupon A. B. Dewey disposed of the last ten shares that he had in his name to John W. Burton for $1,000, and took a note for the same. This is the testimony of an intelligent, competent, disinterested witness, who gives it as his unqualified opinion that the bank was absolutely insolvent. (W. S. Morlan's evidence, pp. 146, 147.)

Miss M. F. Burton says that she was assistant cashier of this bank for a while, and vice-president. She was vice-president when it failed, and was assistant cashier in December, 1894. She was a stockholder and director in the bank. She held $10,000 of stock in her name. She says that at the time C. P. and A. B. Dewey transferred their stock in the bank it was "*hard up*"; the deposits had fallen off; there were in the bank at that time a great many uncollectible notes. The financial condition of that part of the country was bad because of drought. All possible effort was made to collect the bills receivable. Values during the years 1894 and 1895 had shrunk almost to nothing. Most of the notes that were in the bank in 1894 remained uncollected and were in the bank when it failed. She gives a long list of notes that were in the bank in December, 1894, that had been inherited from the Harlan County Bank in 1885. This list amounts to the sum of $14,079. (M. F. Burton's evidence, pp. 138, 139.)

In addition to the other indebtedness in the form of notes of Burton & Harvey, they had an overdraft at the bank in January, 1893, of from $5,000 to $7,000. (Randall's evidence, p. 60.)

Commencing on page 69 of G. M. Lambertson's testimony will be found a large number of letters from the comptroller's office, complaining of various irregularities of the bank. We give some excerpts from these letters for the

purpose of showing the manner in which the bank was run and the nature and character of the various irregularities. (G. M. Lambertson's evidence, p. 69.)

On July 5, 1893, is a letter from James H. Eckles, comptroller, to J. A. Randall, complaining of the fact that the officers and directors of the bank have their notes in the bank for $28,836.71, out of a total loan of $82,000. (G. M. Lambertson's evidence, p. 70.)

October 10, 1893, in a letter from the acting comptroller to Burton, complaint is made that there is over $10,000 of past due paper. (G. M. Lambertson's evidence, p. 71.)

August 2, 1894, in a letter from the acting comptroller to Burton, complaint is made that there is over $12,000 of past due paper, and also complaint that there appears to have been over $8,795 of losses. (G. M. Lambertson's evidence, p. 72.)

In a letter of March 23 complaint is made that the $8,000 borrowed from C. P. Dewey, for which certificates of deposit are issued, were not listed among the bills payable nor so reported. (G. M. Lambertson's evidence, p. 74.)

On pages 75 to 88, will be found letters from the comptroller of the currency making constant complaint of irregularities such as worthless paper, excessive loans, and other matters of complaint in regard to the manner in which the bank was run. (G. M. Lambertson's evidence, pp. 75 to 88.)

J. A. Randall's evidence, pages 94 to 100, inclusive, gives a list of the notes in the bank December 1, 1894, that were worthless, being as follows (J. A. Randall's evidence, pp. 94 to 100 inclusive):

Beem	$1,705 00
Bowen	32 75
Randall	3,900 00
Brocker, Fritz	55 00
Cook, Geo. W.	54 25
DuBois, F. J.	58 00
Finley	172 70
Farrell & McDough	1,169 20
Gillilan	409 00
Hiatt, J. M.	45 00
Harvey, A. E.	243 09
Herald, Christ	55 65
Joyce, Patrick	45 00
Joyce, W. H.	31 00
Kirkpatrick, S. B. and M. J.	1,056 85
Lampson, J. T.	175 65
McNae	934 70
McKerr	563 37
Martin	152 85
Mills, B. D.	2,000 00
Orleans College	996 31
Prickett	267 30
Proper, Watts	659 56
Robertson, C. A.	108 60
Rabattone	10 60
Stowell	58 43
Simpson	52 15
Sitler, H. O.	700 00
State Bank of Republican City	750 00
State Bank of Republican City	1,000 00
Thomas	68 90
Trainer, J. W.	137 75
Vincent, N. B.	2,943 10
Warner, Geo. W.	1,596 04
Whitney, Chas. W.	185 12
Watson, R. H.	1,508 76
	$23,892 59

In addition to this there was in the bank at this time $30,000 of indebtedness of George W. Burton, A. E. Harvey or Burton & Harvey. There was tied up in the bank building and fixtures the sum of $15,693.23; there

was tied up in real estate that was absolutely worthless, the sum of $4,560.88. Thus we observe that *the bank at this time had lost every dollar of its $50,000 capital and in addition thereto the sum of $25,000 that belonged to the depositors, being the principal of all the money that was then on deposit in the bank.*

The following is a list of uncollectible notes in the First National Bank of Orleans, December 1, 1894, and which remained in the bank at the time of its failure as testified to by P. O. Hedlund, receiver (Hedlund's testimony, pp. 107-14):

Ayers, James	$14 75
Bowen, J.	25 00
Brown, W. C.	186 40
Beem, V. B.	1,705 00
Burton, M. F.	5,600 00
Burton, Geo. W.	279 50
Burton, Geo. W.	1,168 00
Burton, A. H.	1,149 80
Burton, A. H.	149 50
Burton, H. W.	1,000 00
Balcom, P. S.	15 00
Cramblett	80 00
on which was collected $55.	
Cook, G. W.	59 50
Dyer	13 85
Finley, O.	172 70
Farrell & McDonald	1,729 65
Farrell & McDonald	239 55
Gillilan, W. T.	381 00
Hiatt, J. M.	45 00
standing at $99.75 in 1897.	
Hovey, P. E.	1,200 00
Harvey, C. B.	4,553 01
Harvey, A. E.	543 00
Herald, Christ	55 65
Inter-State Loan & Trust Co.	5,000 00
Joyce	37 50
Jennings, Wm.	20 00
Joyce, W. H.	31 00

Joyce, M.	$22 70
Kirkpatrick, S. B. & M. J.	1,056 85
Longsine, Alex	51 40
Lampson, J. T.	175 65
Lover, John	9 50
McNeal, L. A.	934 70
McKee	563 37
Mohn, Benno	28 25
Martin, Philip	152 85
Mills, B. D.	2,000 00
Neubauer	1,387 15
Neufelt	33 43
Orleans College	996 31
Purdy, G. R.	22 00
Prickett, Byron	267 30
Poppert	31 00
Propper & Watts	695 56
Robertson	108 60
Stowell	58 43
Simpson	52 15
Soully, B. F.	95 00
Sitler, H. O.	700 00
State Bank of Republican City	1,750 00
Stitt, F. H.	54 80
Thompson, O.	16 00
Thompson, T. B.	68 90
Trainer, J. W.	137 75
Vincent, N. B.	1,443 10
Vincent, N. B.	1,500 00
Vallicott	344 00
Warner	391 67
Warner	1,204 37
Watson, R. H.	1,508 76
	$46,670 91

For the purpose of showing the manner in which the bank did business, we quote from the evidence of A. E. Harvey, p. 127:

"Ben Mills was president of the Republican City Bank. He held accommodation notes signed by me and Burton in his bank, and in consideration of that Mills gave us his

note for $2,000 to the Orleans Bank. I got nothing on the note put in his bank, and he got nothing on the note put in our bank. We simply swapped or exchanged notes."

"The list of notes handed me shows a total footing of $49,150.41. In my opinion $9,000 of the notes were reasonably good and might be called commercial paper December 1, 1894. The balance of the notes on the list would not be considered by business men as commercial paper." (C. T. Simpson's evidence, p. 143.)

"Business of all kinds is at a standstill. I doubt if there was corn enough raised in this country for seed, no small grain at all. With this condition of affairs, it would be folly to expect any business. There is not half feed enough to keep the stock through. Farmers have no money and nothing with which to get any. All we can do is to get along the best we can and keep things in as good shape as possible." (Hogg's evidence, p. 170.)

"I have had a long talk with Gen. Cobb. He thinks it would be a good plan for us to prepare a bill in equity and have it ready to file in the name of the bank against C. P. Dewey, the object being to subject the lands deeded to him to the payment of Burton & Harvey's indebtedness to the bank. No such an action as this can be brought until a receiver should be appointed. And in the meantime Dewey might have an opportunity to get away with the property. If the bank commences action the very day that it closes its doors the pendency of the suit would tie up the real estate and prevent its going into the hands of an innocent purchaser." (Harvey's evidence, p. 122.)

This letter shows that the failure of the bank was the thought uppermost in the minds of Burton & Harvey, the two men who knew most as to the condition of the bank.

"I called on Bartley this morning and he said that if possible he would let me have some money, and told me to call again, that he could not do anything for me until next week, when he said he would positively let me have a thousand dollars and maybe fifteen hundred for ninety days. I urged him to let me have the money today, but he could not. I then called on Harwood, president of the

First National Bank, for a thousand dollars until next week. I also called on Mayer Bros. for fifteen hundred dollars. I got $500 currency from Harwood after a long talk." (Harvey's evidence, pp. 130, 131.)

This letter from Harvey to Burton was in answer to Burton's letter in the form of an appeal for help and it simply shows how the bank at this time was scraping the bottom of the barrel and moving heaven and earth for a little currency with which to keep the bank floating, even pleading for a thousand dollars or five hundred dollars; all of which shows conclusively that the bank was on its last legs.

The following is a list of the depositors when the bank failed, which shows that *all the money they had was public money:*

Burton & Harvey	80 16
Beresford, A. M.	3 63
Bemis & Ostberg	213 87
State Treasurer	20,000 00
Coulter, J. M.	11 01
Christensen, Henry	5 00
Edwards, J. W.	1 90
Easterbrook, E. M.	1 50
Grafft, Emma	150 00
Hale, C. A.	8 93
Ireland, W. B.	9 00
Klugh, J. R.	10 44
McCulloch, D. A.	4,020 87
Munson, P. H.	7 72
McGeachin, Jas.	4 59
Newton, H. C.	283 75
Olson, B.	8 20
Ostrander, J. W.	5 20
Richards, Jesse	8 20
Shea, P. W.	28 24
Tibbets, Susa	1,200 00
	$27,978 31

Report of an Examination of the First National Bank, Orleans, Nebraska, made February 28, 1894, by J. M. Griffith, National Bank Examiner. (Randall's evidence, Exhibit 122, p. 232.)

"Only two formal meetings are held by directors a year, and apparently they know little regarding the inside workings of the bank, and the management is left entirely to the officers. They have no active discount and examining committees and no report is on file.

"Annual meeting was held on proper date, 480 shares represented. Mr. John A. Randall acknowledges to me that of the amount he owes $1,000 of it was given in payment of the 10 shares of stock he owns, and is not qualified to act as a director.

"In my opinion this bank will never be able to do a prosperous business until the president and his associates pay up what they owe the bank, and reloan the funds to outside parties, who will in return bring business to the bank. Mr. G. W. Burton I now learn induced Mr. C. P. Dewey and A. B. Dewey of Chicago to buy stock in this bank, and guaranteed all notes at face and interest, securing Messrs. Deweys by turning over to them all the assets of the Interstate Trust Co., as a guarantee of fulfilling their part of the agreement, so that I am informed by Cashier Randall that while there are 'bad debts' and other past due paper in the bank on which will probably occur losses, yet the stockholders will not sustain any loss by reason of Burton & Harvey having to make good these losses, and the sooner the Deweys require Mr. Burton to do this, the better it will be for the bank's interest. The bank is far from being in a satisfactory condition to an examiner, yet from all I can ascertain depositors' interests are safe, as A. B. Dewey and C. P. Dewey are financially able and so situated that they would have to carry this bank through any trouble, but the bank ought to stand on its own bottom, by arranging its affairs to do so.

"So far as I am able to ascertain their directors know little of what is in this bank, and only two formal meetings have been held without going over matters in the bank, and no mention is made of their examining and approving loans. The Dundy Bros.' excess loan as noted above is for purchase of feed cattle that parties are feeding, and cashier

claims that they have mortgage on cattle as security. From year to year as this bank is examined there is so many *continued* and *standing* loans and either directly or indirectly are the outcome of the private business of firm of Burton & Harvey, the president of this bank, Mr. Geo. W. Burton, being a member of that firm, and the amount when totaled figures over half their capital stock paid in as follows: Interstate Loan & Trust Co. (incorporated), $5,000; Geo. W. Burton, president, $4,997.50; A. E. Harvey, $4,996.01; M. F. Burton (sister of president), $5,000; A. H. Burton (wife of president), $1,691.80; J. A. Randall, cashier, $2,900.00; two mtg. notes, $1,063.50; making in all $25,648.81, and really the bank has no security for these loans, but about a year ago, when Mr. A. B. and C. P. Dewey bought an interest in the bank, Burton & Harvey guaranteed all loans, and secured them by turning over about all assets of the Trust Co. Burton & Harvey are really sole owners of that Co. and it is apparent that notes are so arranged as to avoid showing an excess loan in violation of the law, and interest is paid regularly, and loans carried along, but in my opinion all these loans should be paid up, and funds loaned to customers who will bring business to the bank. Other loans seem proper and right, being mostly farmers' notes in small amounts.

"Of notes listed as 'bad debts' I am of the opinion they will lose some $2,800, and on other overdue paper there is a loss of some $5,000; yet on account of the Deweys having a guarantee from Burton & Harvey the stockholders will not lose a cent, but these notes are not in bankable shape as they now are, and they should be paid and taken out of this bank by Burton & Harvey, and funds loaned to other parties, and Vice-Prest. C. P. Dewey and Director A. B. Dewey ought to require this to be done, for as losses now show there is apparently a small impairment of capital."

II.

Dewey had actual knowledge that the bank was insolvent when he made the transfers

C. P. and A. B. Dewey both attended the stockholders' meeting of the bank in January, 1892, when A. B. Dewey

was elected a director and C. P. Dewey was elected vice-president. They both continued to occupy these positions in the bank until the 1st of January, 1895. (See p. 29 of Exhibit 13, being the book containing the record of the meeting of the stockholders and board of directors of the bank. (C. P. Dewey's evidence, p. 91.)

At the meeting of the board of directors on January 12, 1892, the following resolution was adopted (p. 26 of Ex. 13, and p. 91):

"That C. P. Dewey, who has been elected vice-president of this bank today, be fully empowered to examine the books, accounts and assets of this bank, at any time he may so desire."

A. B. Dewey was elected a director on January 10, 1893, at a meeting of the stockholders of said bank, and on the same date, at a meeting of the directors of the bank, C. P. Dewey was elected vice-president. (P. 29 of Ex. 13, and p. 92.)

On January 9, 1894, A. B. Dewey was again elected a director and C. P. Dewey was elected vice-president of the bank. (Pp. 32, 33 of Ex. 13, and p. 91.)

C. P. Dewey was a man of large properties and varied experiences in the business world. He was cashier of the Harrison National Bank of Ohio, with a deposit account of over $700,000. (C. P. Dewey's evidence, pp. 219, 220.)

There was introduced, as a part of J. A. Randall's evidence, a large number of letters from C. P. and A. B. Dewey to George W. Burton, commencing on page 17 of Randall's evidence. We desire to give simply such excerpts from these letters as will bear upon the question of the insolvency of the bank, as well as of Burton & Harvey, and show Dewey's connection with the active management of the bank.

May 4, 1894, the Deweys, in a letter to Burton, say:

"After having advanced about $50,000 to help Burton & Harvey along we do not feel that we can make any further advances of money. * * *" (Randall's evidence, p. 20.)

January 16, 1894, C. P. and A. B. Dewey write to George W. Burton as follows:

"If the property does not sell for enough to pay off all claims, then the bank will have to bid in the property to protect itself. If it has a value of $1,500 as you say, then the bank had better get an assignment of the tax certificates. The bank is already loaded up with stuff not producing revenue, besides real estate far beyond what the law allows. We fear the comptroller will make a fuss about it." (Randall's evidence, pp. 23, 24.)

March 28, 1894, the Dewey's write (Randall's evidence, p. 27):

"We have just received a communication from the comptroller of the currency stating that on the 23d inst. he mailed our bank an important letter and asking us to read it. Will you please forward us a copy?"

February 5, 1894, they write to J. A. Randall (Randall's evidence, p. 28):

"Your favor enclosing statement of two Lincoln banks whose stock you hold as collateral for Mills' note. These banks do not seem to be particularly strong, and perhaps if their true condition was ascertained they might be worse than their statement shows."

Under date of March 26, 1894, the Deweys write to Burton (Randall's evidence, p. 30):

"We have simply been advancing large sums of money *to bolster up and keep Burton & Harvey and the bank running*, without having much voice in dictating how the money shall be applied. * * *"

Under date of May 15, 1893, the Deweys write to Burton (Randall's evidence, p. 39):

"When the bank examiner comes around and finds that nothing has been done regarding the payment of this note (Friedly note for $600) he is likely to make trouble, especially when he *finds so many other things not in accordance with the national banking laws.* Owing to the numerous bank failures throughout the country the examiner will be very particular when looking over your paper. * * * When we were in Orleans last we noticed that a note of one Friedly for $600, discounted by the bank for Burton & Harvey, had been sent off for collection and that the bank had nothing in lieu of this note except the attorney's receipt."

Under date of August 3, 1893, C. P. Dewey writes to Burton and Randall as follows (Randall's evidence, pp. 42, 43):

"Your favor of the 1st inst. received giving the condition of your cash resources and asking for some help. * * * I have been out to see what I could do myself. Money matters are extremely close here, and while our best banks are strong, they are not willing to make any new loans. I have written for $5,000 which has been ordered sent to you in currency from A. Castetter, banker, Blair, Nebr. You are to issue a certificate of deposit in the name of Mauerman for $5,000. You are also to send $7,500 of your best notes as collateral security, with power of attorney, authorizing me to make this and other loans, if necessary for the benefit of the bank, not exceeding $20,000. I would think it important for you to keep the bulk of your funds in your vault. I think it would be advisable to write to both of your correspondents and ask them if your bank can borrow $5,000 of each. I am inclined to believe that most of the trouble is over. I would like to have a daily report from you sent each day for a time."

September 2, 1893, C. P. Dewey writes J. A. Randall, cashier (Randall's evidence, p. 44):

"I enclose N. Y. draft for $3,000, payable on demand, drawing 8 per cent interest, for the protection of the bank.

Whenever you can afford the funds, return it to me. I can make greater interest here. You can put it in at $1,000 lots. After due deliberation we decided for the better security of the bank as well as ourselves, to record the deeds, of which you can notify Mr. Burton."

October 3, 1894, the Deweys write to Mr. Burton acknowledging the receipt of a deed to Burton's home farm, subject to mortgage of $12,000, which deed is not to be recorded until January 1, 1896. (Randall's evidence, p. 45.)

February 11, 1895, is a letter from C. P. Dewey to Mr. Burton saying (Randall's evidence, p. 49):

"I note from your letter that it will not be convenient for you to pay my certificates of deposit without borrowing. I will ask you to pay me $500 during the next ten days."

After January, 1892, A. B. Dewey was a director and C. P. Dewey vice-president, and J. A. Randall, the cashier, reported directly to them, and they gave a great deal of time and attention to the details of the bank. This fact will be shown by excerpts from the following correspondence (Randall's evidence, p. 19):

March 9, 1893, C. P. and A. B. Dewey write to George W. Burton (Randall's evidence, p. 19):

"These old claims that were entirely worthless were agreed by you to be taken care of and to be taken out of the bank, and this we will expect you to do. When there is any expense attending the collection of them it must be charged to Burton & Harvey and not left for the bank to pay."

May 4, 1894, C. P. and A. B. Dewey write to George W. Burton relative to certain threatened foreclosure suits by parties holding notes and mortgages of Burton & Harvey. Among other things this letter says (Randall's evidence, p. 21):

"After having advanced about $50,000 to help Burton & Harvey along we do not like to have them manifest more confidence in strangers than they have in us. We do not feel that we can make any further advance of money for their protection until they show a greater degree of confidence in us. * * * After having placed confidence in them to the extent of $50,000 it ill becomes them to show signs of suspicion."

December 22, 1893, C. P. and A. B. Dewey write George W. Burton advising him that they, in company with Mr. Hogg, are of the opinion that it is wise to pass the dividend that would be declared in December, 1893. (Randall's evidence, p. 23.)

January 20, 1894, C. P. and A. B. Dewey write to J. A. Randall calling for a report of the two Lincoln banks, whose stock was held by the Orleans bank to secure B. D. Mills' note, and criticising the loan by the bank to individual parties of large amounts, and asking them to change the policy of the bank suggesting that it is better to have a thousand dollars loaned to ten different men than to one. (Randall's evidence, p. 24.)

January 30, 1894, C. P. and A. B. Dewey write to George W. Burton relative to the manner in which the funds should be used in the bank belonging to Burton & Harvey, and asking that all such moneys shall be applied upon the indebtedness of Burton & Harvey to C. P. and A. B. Dewey. (Randall's evidence, p. 25.)

April 13, 1894, the Deweys write to Burton returning to them the comptroller's letter that had been sent them for their examination and inspection. (Randall's evidence, p. 27.)

February 5, 1894, C. P. and A. B. Dewey write to Randall urging him to press Mills for payment on his note, asking him to pay $500 or $1,000, and to do the same with

all the other large borrowers of the bank, suggesting to him that this is necessary because the Cadiz people, who had some money in the bank, would draw it out in the spring; and also asking if the Pat Gibbons note, which was for $3,000, had yet been paid.

March 15, 1894, is a letter from the Deweys to Burton suggesting the manner of keeping certain accounts in the bank and asking for an account of sales of lands, etc. (Randall's evidence, pp. 29, 30.)

July 31, 1894, C. P. and A. B. Dewey write to George W. Burton relative to the propriety of denationalizing the bank, and referring to the fact that Burton is unable to meet an interest payment of $360 due September 1, 1894, on a $12,000 farm loan, together with the taxes for 1893, and saying (Randall's evidence, pp. 31, 32.)

"It only shows the necessity of your making an effort to borrow some money from banks and to pay us off; then we would be willing to advance this interest and taxes for you, as mentioned; but we will not advance any more money until our claim is paid. * * * It is useless to suggest the denationalizing of the bank."

December 4, 1893, C. P. Dewey writes (Randall's evidence, p. 32):

"I have taken up your certificate for $5,000 to Mauerman. You may send me five certificates for $1,000 each, payable on demand, with eight per cent interest. At any time that you have funds and can pay any part of this please do so."

September 20, 1893, C. P. and A. B. Dewey write to Geo. W. Burton (Randall's evidence, p. 33):

"Your plans for liquidation as mentioned in yours of the 11th inst. we have not yet so fully investigated as to be able to give you a definite reply. Will write you about this later."

August 28, 1894, the Deweys write to Geo. W. Burton as follows (Randall's evidence, pp. 44, 45):

"We received your letter enclosing your two notes of $180 each which you ask us to take and furnish you enough money to pay the six month's interest on your $12,000 loan due September 1st next. We return these notes. We are not willing to advance you any more money unless you properly secure us." (Randall's evidence, p. 45.)

At this date the First National Bank of Orleans held $30,000 of Burton's paper, entirely unsecured, as they knew.

October 3, 1894, C. P. and A. B. Dewey write a letter to George W. Burton acknowledging the receipt of a quit-claim deed for Burton's home farm, in consideration of which they were to advance him $360 to pay the interest due September 1, 1894, on a $12,000 mortgage. But, *did the Deweys expect that Burton would pay his $30,000 owing to the First National Bank when he was unable to pay the interest on a $12,000 farm loan mortgage, and they had advanced him the money to pay the interest, but before doing so required a deed to the farm?* (Randall's evidence, p. 45.)

December 22, 1894, C. P. Dewey writes to J. A. Randall enclosing for payment a certificate of deposit of $1,000 and asking for some of the printed slips of their last bank statement December 19, 1894. (Randall's evidence, p. 48.)

During the years 1893 and 1894, C. P. and A. B. Dewey wrote to J. A. Randall and George W. Burton relative to matters in this bank weekly and sometimes oftener, and these letters will all be found as a part of the evidence of J. A. Randall.

These letters show that C. P. and A. B. Dewey refused to make any further advances to Mr. Burton in the way of

loans, and at the same time they knew that they had deeds of conveyance to all of the property that Burton & Harvey had, and they also knew that Burton & Harvey owed the bank more than $30,000 and that the bank had absolutely no security for the payment of any of their notes. In other words, they seemed to be willing that Burton & Harvey should owe the bank $30,000 without security, but refused to advance Burton & Harvey any money without having ample security for it.

These letters show that the Deweys had a perfect insight into the condition of the bank and the manner in which it was being conducted, and were supervising and superintending the manner in which the business of the bank was to be managed, and required Mr. Randall, the cashier, to report practically everything to them at their office in Chicago, and to furnish them a daily trial balance, and they were fully posted as to what was going on in the bank, so that it might be said truthfully that both the Deweys were engaged in the active management of the bank, and directed the policy and the whole affair. The Deweys, with their relative, Mr. Hogg, owned a majority of the stock, and it might be said that the whole management and control of the bank was in their hands. They saw to it that Burton & Harvey turned over to them everything they had to secure the $22,000 that they had advanced from time to time for Burton & Harvey. They should have been equally vigilant in seeing that Burton & Harvey's indebtedness to the bank was also secured.

C. P. Dewey testified that during the fall of 1893 he loaned the First National Bank of Orleans $5,000. That was a personal loan entirely, and the bank issued a certificate for $5,000. This was taken up December 9, 1893. On September 5, 1893, he loaned in the same form $3,000. This is the loan that is referred to in the letter of C. P. Dewey to Geo. W. Burton under date of August 3, 1893.

It is disclosed in this letter that the $5,000 certificate was secured by $7,500 of the best notes of the bank as collateral. It thus appears that Mr. Dewey himself was unwilling to loan or advance any money to the bank in the fall of 1893, without being amply protected and secured. He could not have had a very high idea of the ability of the bank to pay its debts. (C. P. Dewey's evidence, p. 185.) (Randall's evidence, pp. 142, 143. Letter, p. 42.)

C. P. Dewey says (C. P. Dewey's evidence, p. 186):

"I did not learn that there was any question of the solvency of the First National Bank of Orleans, Nebraska, until the bank closed its doors in 1897. * * * At the time I was negotiating for the purchase of this stock there was a personal investigation made as to the bank by a representative that we sent there. When we bought the 260 shares of stock Burton & Harvey personally agreed to assume and guarantee the payment of all bills receivable in the bank, and we considered their guarantee entirely good. I made thorough examinations of the affairs of the bank from frequent statements, and we attended their annual meetings for several years after we bought the stock. We investigated their bills receivable from time to time, and they seemed all right."

C. P. Dewey says (C. P. Dewey's evidence, p. 187):

"Prior to 1896, I did not receive any information as to the character of these various bills receivable or any other bills receivable which the bank held other than I received by these papers which have been introduced, except what John A. Randall and Burton told me, and they assured me at all times that they were good. I did not receive any information that they were bad. At those annual meetings I made an examination, only in a general way, asked questions of the cashier and president, and assistant cashier."

The uncontradicted evidence shows that C. P. Dewey was furnished with an itemized list, giving the names of makers and amounts of all the notes in the bank, and each

one of these lists always showed notes of Burton or Burton & Harvey for about $30,000; all of which C. P. Dewey knew were absolutely worthless, as he held all of the property of Burton & Harvey to secure his and A. B. Dewey's indebtedness.

The first dividend was passed by the bank December 22, 1893. The bank paid no dividend for a year before C. P. Dewey sold his stock. From this statement it will be seen that no dividends were paid after July, 1893. (Testimony of Chas. Killen, p. 226.)

III.

Dewey's purpose in making the transfers was to avoid liability because of the known insolvency of the bank and the certainty that it would eventually go under.

The following is a list of the real estate for which Mr. Dewey exchanged his 105 shares of bank stock, including the 20 shares of C. M. Hogg.

December 10, 1894, he purchased from L. Eberhart, R. Dubbs, and Albert C. Kindig, lot No. 2, in Eberhart, Robinson & Good's Subdivision of the east half of the southwest quarter of the northeast quarter of section 14, township 38, range 13, being a part of the Chicago Lawn property. Consideration was $12,000. It was paid:

By conveyance of quarter section of land in Rawlins county, Kansas, which was valued at	$1,500 00
Incumbrance assumed	5,000 00
Thirty-five shares of stock in Orleans Bank	3,500 00
Cash	2,000 00

On December 14, 1894, he made purchase from Jules W.

Jouvenat of lots 1, 2, 3 and 4 in J. O. Bryant's Subdivision of lots 5 and 8 in Conrad Seipps' Subdivision of the west half of the northwest quarter of section 25, township 38, range 14, Cook county, Illinois. Consideration $11,000, paid as follows:

Twenty shares of bank stock	$2,000 00
Assumed master's certificate	5,500 00
Half section of land in Dundy county	3,500 00

This Dundy county land was worth $700. Frank Israel of Dundy county, who was a real estate man and familiar with the land, thus fixes its value. The value of the Rawlins county land was $300, as shown by the evidence of F. E. Robinson and R. S. Hendricks. (Pp. 256, 257.)

On December 29, 1894, Dewey purchased from R. Dubbs and A. C. Kindig lots 1 to 12 and 19 to 25, inclusive, and 29 to 34, inclusive, and lots 41 to 46, inclusive, in block 3, in Eberhart, Robinson & Good's Subdivision of the east half of the southwest quarter of the northeast quarter of section 14, township 38, range 13, in the city of Chicago, Cook county, Illinois. Consideration for these lots was $9,000, paid as follows (pp. 164-5-6):

Bank stock, 30 shares	$3,000 00
Incumbrance assumed	4,000 00
Cash paid	2,000 00

January 10, 1895, Mr. Dewey purchased from Charles H. Killough lot 85 in Longwood's Subdivision, in the southeast quarter of section 6, township 37, range 14, and also lots 23 and 24, in block 10, in Ashland Subdivision of the north three-fourths of the east half of the northeast quarter of section 18, township 38, range 14, all in Cook county, Illinois, for a consideration of $8,250, paid as follows (pp. 164-5-6):

Bank stock, 30 shares	$3,000 00
Incumbrance assumed	1,500 00
Cash paid	3,750 00

On January 9, Mr. Dewey bought from Emile Jouvenat

lots 63, 64 and 65 in block 1, Richard S. Cook's, Jr., Subdivision of ten acres in the southeast quarter and the southwest quarter of section 17, township 38, range 14, Cook county, Illinois. Consideration $1,300, which was paid as follows (pp. 164-5-6):

Ten shares of bank stock	$1,000 00
Incumbrance assumed	900 00

C. P. Dewey had *advertised this stock for trade* for Chicago real estate, and he traded his stock to L. Eberhart, H. Dubbs, and Albert C. Kindig, Jules W. Jouvenat, Charles H. Killough and Emile Jouvenat. The following evidence from F. S. Eberhart, Levi Eberhart, Charles Jouvenat, Charles H. Killough, will show how they regarded the stock at the time of the trades. (F. S. Eberhart's evidence p. 148.)

F. S. Eberhart was the son of Levi Eberhart. Levi Eberhart was a member of the firm known as Eberhart, Dubbs & Kindig. The son, F. S. Eberhart, traded Chicago real estate for sixty-five shares of C. P. Dewey's stock. *His attention was directed to Mr. Dewey's stock being for trade or sale through an advertisement in the Chicago Tribune.* He made the trade direct with Mr. Dewey and was told that the stock belonged to Mr. Jewett. His first trade concerned $12,000 nominal value of real estate in Chicago. Mr. Dewey traded for it and paid for it as follows (pp. 152-3):

Incumbrance assumed	$5,000 00
Cash paid	2,000 00
First National Bank stock	3,500 00
160 acres of land in Rawlins county, Kansas	1,500 00

Mr. Eberhart says the chief inducement for making the trade and getting rid of the Chicago real estate was on account of the $5,000 encumbrance which they had hard work to pay the interest on. That they made no inquiries

as to the bank stock, or its value; did not know the amount of deposits; wrote no letters concerning it. That Mr. Dewey made no representations of any kind except that he showed them a printed report. Did not know at the time that he traded for the stock that the bank paid no dividends; made no inquiries relative to the Rawlins county land or its value; was not personally interested in the deal himself, but made it for Eberhart, Dubbs & Kindig; that the bank stock was divided evenly between Eberhart, Dubbs and Kindig, each taking one-third. (F. S. Eberhart's evidence, pp. 148, 149.)

Levi Eberhart was the father of F. S. Eberhart and seventy-nine years of age, engaged in the real estate business. He had nothing to do with the real estate trades whereby their firm got the bank stock; the business was all attended to by his son, F. S. Eberhart. He made no inquiries relative to the value of the bank stock, and had nothing upon which to base a judgment as to it except the printed report. That the principal inducement for trading the real estate and taking the bank stock was that the property was on a downward tendency and they were anxious to get rid of the incumbrance on the property, because they were unable to pay the interest, and at the same time to get what cash they could out of the transaction. That *they placed no particular value upon the bank stock, but thought that if they could get anything out of it it would be all right, and if not, they would simply have to do the best they could.* (Levi Eberhart's evidence, pp. 152, 153.)

Charles Jouvenat was the father of Jules Jouvenat and the brother of Emile Jouvenat. The sale to Jules Jouvenat was conducted by E. P. Davis, the real estate in this transaction belonging to Charles Jouvenat, but the bank stock was taken in the name of Jules W. Jouvenat. In this transaction neither Charles nor Jules W. Jouvenat knew

anything about the First National Bank of Orleans or the value of its stock or the condition of the bank, except what was shown by a printed statement. The trade with Emile Jouvenat for a consideration of $1,900 was conducted by his brother, Charles Jouvenat. No satisfactory reason is given by Charles Jouvenat as to why he bought the bank stock in his son's name. (Chas. Jouvenat's evidence, pp. 227, 228.)

Chas. Jouvenat says that the chief object in making both of these trades was to get rid of the incumbrance; that the interest was due, and that they were not able to pay it. There was a master's certificate on the property; that is, the property had been foreclosed and the time for redeeming the property had about expired, and these people, being unable to raise the cash, made the trade. (P. 229.)

The following is a statement of all of the facts and dates connected with the transfer and retransfers of the stock of C. P. Dewey to Jewett and of A. B. Dewey to the Shufelts:

January 26, 1893, C. P. Dewey endorsed certificate No. 52 for 50 shares, certificate No. 62 for 40 shares, and certificate No. 76 for 15 shares. On February 6, 1893, there was written across the face of each one of these three shares the word "cancelled."

On the same date of the cancellation of the three certificates above named there was issued in lieu thereof the following certificates: No. 84 for 95 shares to F. L. Jewett; No. 85 for 10 shares to C. P. Dewey. These two certificates cover the same stock that was represented by Nos. 52, 62, and 76.

On the same date, to-wit, January 26, 1893, A. B. Dewey endorsed certificates No. 53 for 50 shares, No. 61 for 40 shares, No. 74 for 25 shares; and these certificates were all

marked across their faces with the words "cancelled, February 6, 1893."

On the same date of the cancellation of these three certificates there were issued the following certificates in lieu thereof, to-wit: Certificate No. 81 for 50 shares to H. H. Shufelt; certificate No. 82 for 55 shares to A. H. Shufelt; certificate No. 83 for 10 shares was reissued to A. B. Dewey.

This left both C. P. and A. B. Dewey owning 10 shares each. If there was no concert of action between the Deweys and no understanding in regard to the stock, how did it happen that they each endorsed their three certificates on January 26, 1893, and that all of said certificates were cancelled by the bank on the same date, to-wit, February 6, and that then the stock certificate to F. L. Jewett No. 84 for 9 shares and No. 85 for 10 shares, and the certificate to H. H. Shufelt and to A. H. Shufelt and to A. B. Dewey should all be dated and reissued on exactly the same date, to-wit, February 6? The matter does not stop here. On September 5, 1893, Jewett endorsed his certificate No. 84 for 95 shares. It was surrendered to the bank and cancelled on September 8; and on the same date there was reissued to C. P. Dewey certificate No. 88 for 95 shares.

September 14, 1893, H. H. and A. H. Shufelt surrendered their certificates No. 81 for 50 shares and No. 82 for 55 shares, and they were cancelled on that date and reissued to A. B. Dewey in certificates No. 89 for 50 shares, No. 90 for 30 shares, and No. 91 for 25 shares. By the September transactions all of the stock formerly held by C. P. and A. B. Dewey was retransferred to them by Jewett and the Shufelts, and there was only six days difference between the dates of the issuance of the stock certificates to A. B. Dewey and C. P. Dewey. Both of these men continued

to hold their stock certificates until the 4th day of May, 1894, when we find that C. P. and A. B. Dewey both endorsed their various certificates on the same day, to-wit, May 4, 1894; their certificates were cancelled on the same day, to-wit, May 7, 1894, and on the same date new certificates were issued in lieu thereof as follows:

Certificate No. 92 for 30 shares, and certificate No. 93 for 25 shares and certificate No. 94 for 50 shares to A. H. Shufelt; and certificate No. 95 for 95 shares to Fred L. Jewett.

It is not within the range of human possibilities to suppose that the various certificates of C. P. and A. B. Dewey could have been endorsed, cancelled, transferred, and retransferred all on the same date without a previous arrangement and agreement between the parties. A. B. Dewey says that there was an arrangement and consultation and agreement and understanding between himself and C. P. Dewey relative to all of those transfers and that explains the reason why they were made on the same date.

The following is a complete history of the transfer from F. L. Jewett to his immediate transferees, including the 105 shares of the original C. P. Dewey stock, and the 20 shares purchased by Dewey from Hogg December 20, 1894 (pp. 2, 3):

December 13, 1894, F. L. Jewett surrendered certificate No. 95 for 95 shares, which was reissued to himself in the following certificates: No. 96 for 5 shares, No. 97 for 5 shares, No. 98 for 5 shares, No. 99 for 10 shares, No. 100 for 10 shares, No. 101 for 10 shares, No. 102 for 10 shares, No. 103 for 20 shares and No. 104 for 20 shares.

December 26, 1894, C. M. Hogg surrendered certificate No. 60 for 20 shares, which was reissued to F. L. Jewett —See certificate No. 105.

December 29, 1894, F. L. Jewett surrendered certificate

No. 103 for 20 shares, which was reissued to Jules W. Jouvenat—See certificate No. 106.

On the 10th day of January, 1895, F. L. Jewett endorsed and transferred the following certificates to Charles H. Killough: No. 96 for 5 shares, No. 97 for 5 shares, No. 100 for 10 shares, No. 101 for 10 shares. But these certificates were not returned and cancelled, and new certificates issued to Charles H. Killough, but on the 6th day of February, 1895, Charles H. Killough attaches an assignment to these same certificates assigning them to J. G. Hatcher. Hatcher did not have the old certificates cancelled and new certificates issued to him, but he reisued all of these certificates to C. C. Hatcher on the 13th day of February, 1895. These old certificates were returned and cancelled on February 21, 1895, and were reissued on that date to C. C. Hatcher as follows: Certificate No. 134 for 10 shares, No. 135 for 10 shares, No. 136 for 5 shares, No. 137 for 5 shares.

March 4, 1895, F. L. Jewett surrendered the following certificates: No. 109 for 5 shares, No. 110 for 5 shares, which were reissued to Emile Jouvenat in the following certificates: No. 138 for 5 shares, No. 139 for 5 shares.

December 18, 1895, F. L. Jewett assigned certificate No. 104 for 20 shares to L. Eberhart, who in turn assigned the same certificate to A. C. Kendig, to whom certificate No. 148 was issued for 20 shares. No. 148 is dated January 9, 1896.

January 3, 1895, Jules W. Jouvenat surrendered certificate No. 108 for 10 shares, which was reissued to Eli K. Gougar—See certificate No. 141.

A. B. Dewey testifies that soon after the Deweys came home from the stockholders' meeting of January 10, 1893, A. B. and C. P. Dewey had a conversation relative to the transfer of their stock in the bank. The result of that

conversation was that A. B. Dewey was to consult their attorney, E. F. Runyan, in regard to the matter, and he advised them that all they had to do to evade their liability as stockholders was to put their stock in the name of someone else; and on the 6th day of February C. P. Dewey transferred ninety-five shares of his one hundred and five shares to his stepson, Fred L. Jewett, the certificate of stock being endorsed on the 26th day of January, 1893. On this same date, to-wit, January 26, 1893, A. B. Dewey endorsed three of his stock certificates to his relatives H. H. and A. H. Shufelt. All of these stock certificates were marked across their face "Cancelled, February 6, 1893."

A. B. Dewey was advised by their attorney, E. F. Runyan, that all that was necessary to evade their liability was to transfer their stock to some other party; he communicated this advice to C. P. Dewey and these transfers to the Shufelts and to Jewett by the two Deweys were made pursuant to this advice, in a few days after they had received this advice. * (A. B. Dewey's evidence, pp. 156, 157.)

A. B. Dewey says that they were led to talk over the matters in which they were interested in connection with this bank because of the tightness of the money market, of the number of banks that had failed, and the bad conditions of the west that were so injurious to all the banks, and because of the condition in which they found the paper of the bank at their examination in January, 1893. (A. B. Dewey's evidence, p. 157.)

Jewett continued to hold the ninety-five shares of C. P. Dewey, and the Shufelts continued to hold A. B. Dewey's stock until September, 1893, when the Deweys were importuned by Burton, president of the bank, to have their stock retransferred to themselves because it was injuring the bank. (A. B. Dewey's evidence, p. 158.)

The Shufelts and Jewett retransferred their respective

holdings to C. P. and A. B. Dewey on the 14th day of September, 1893, after a personal conference between the Deweys. Burton wrote to the Deweys that it was absolutely necessary for them to take this stock back in their own names, owing to the panicky condition of the country and in order to give the bank credit. Both the Deweys agree on this statement as to the reasons why they took back their stock in their own names. The matter stood thus until the 4th day of May, 1894, when C. P. Dewey and A. B. Dewey both indorsed their stock certificates on the 4th day of May, 1894; across the face of each stock certificate is written the words "Cancelled May 7th, 1894"; and at this time C. P. Dewey transferred his ninety-five shares to Fred L. Jewett again, and A. B. Dewey transferred his 105 shares of stock to A. H. Shufelt. Prior to this transfer the Deweys had another conference, when they talked about the propriety of making these transfers. The conditions in the west were getting worse, and they were somewhat alarmed about the outcome of the bank. The situation was the subject of serious conversation. C. P. Dewey said: "We had better be damned"; he said, "We had better get out of the thing." A. B. Dewey coincided in that opinion (A. B. Dewey's evidence p. 159):

"It was decided what we should do; that we had best make the transfer. There was a long conversation about the condition of both Burton and the bank. Burton kept writing about the condition of the bank and wanted to denationalize; that something had to be done, as the comptroller was after him constantly. So that we concluded that it was best to transfer the stock. The object of making the transfer was to get rid of the double liability on the stock."

A. B. Dewey went to C. P. Dewey prior to the January meeting in '95 and said: "I wish you would take my proxy out and vote my stock." He said he would not be able to attend the meeting, and I had better send mine out and he would do the same. I sent my proxy out. This was in

December, 1894. I sent my proxy by letter to Mr. Burton and stated that C. P. Dewey would send his out to be voted at the annual meeting, and then it was I had a letter from Burton from which I learned for the first time that C. P. had commenced a disposition of his stock. I did not know that. He had not told me that he was going to sell, and it was a great surprise. I thought we were acting together in the investment; so I immediately went out. (P. 160.)

A. B. Dewey went to Orleans, Neb., to attend the January meeting of the stockholders, and it was then that he learned for the first time that C. P. Dewey had transferred his stock, that stood in the name of Fred L. Jewett, to other parties. He had not conferred with his brother, A. B. Dewey relative to these transfers, and it was a great surprise when A. B. Dewey found this condition of affairs. (A. B. Dewey's evidence, pp. 106 to 161.)

A. B. Dewey says that at this trip he had W. S. Morlan, an attorney of McCook, a man of wide experience and great familiarity with affairs in the west, and with an extensive acquaintance with the customers of the bank, go over the notes held by the bank, and that Morlan gave it as his opinion that the bank was absolutely insolvent; and A. B. Dewey while there disposed of his remaining ten shares of stock in the bank in order to get rid of it, and took a worthless note for the same. (A. B. Dewey's evidence, p. 161.)

A. B. Dewey had a letter from Burton in December, 1894, intimating to him that C. P. Dewey was selling, or had sold, his stock, to other parties than Jewett. (A. B. Dewey's evidence, p. 161.)

A. B. Dewey says that he found on inquiries from others that the notes of the bank were no good, that they were worthless, that Burton & Harvey were heavily in debt, and

in order to keep up the bank had to borrow money from the Deweys in order to pay their individual indebtedness to outsiders, to keep them from closing in on Burton & Harvey and closing the bank. (A. B. Dewey's evidence, p. 162.) When the Deweys and Hogg bought the $26,000 of stock in the bank, it was supposed that that would clear up all the indebtedness of Burton & Harvey, but the Deweys found to the contrary. They found new indebtedness continually bobbing up, and that indebtedness was far in excess of what Burton & Harvey had represented it. The Deweys were then compelled to advance more money in order to protect the bank, and the matter continually got worse instead of better. C. P. Dewey said himself that he thought that the statements of Burton in regard to the bank were overestimated, and he thought the whole business was a good deal of "chips and whetstones." (A. B. Dewey's evidence, p. 163.)

C. P. Dewey denies the material statements of A. B. Dewey, denies that they had any conversation or conferences relative to the transfers of their stock; but A. B. Dewey's evidence is corroborated by the almost unanswerable circumstances that they both transferred their stock and endorsed their certificates on the 26th day of January, 1893. Their stock certificates had the words "cancelled" on the face of each one of them, "February 6th, 1893." The Shufelts and Jewett retransferred to both of the Deweys on the same date in September, 1893, and on the same date, to-wit, May 4, 1894, the Deweys both indorsed their certificates of stock, and they are cancelled on the same date, to-wit, May 7, 1894. It is not possible that these various transfers of so many different certificates of stock could have taken place on the same day by mere chance. There must therefore have been conversations, conferences, and concert of action between the Deweys. C. P. Dewey, in his testimony taken at Manhattan, Kan., attempts to break down the force of this circumstance by saying that he and

A. B. Dewey were not on speaking terms during 1893 and 1894, and that his private clerk, Mauerman, must have kept A. B. Dewey posted or advised as to what he was doing, and that A. B. Dewey did the same thing. These transactions cannot be explained or accounted for in this way, because their stock certificates reached the bank at Orleans on the same date and were there cancelled on the same date by the officers of the bank, and new stock certificates were reissued on the same date. This happened in the first transfers from the Deweys to Jewett and Shufelt, and in the transfers from Jewett and Shufelts back to the Deweys, and again in the transfers from the Deweys to Jewett and the Shufelts. In addition to this, Mauerman testifies (Mauerman's evidence, pp. 250-255), that the Deweys were on most intimate terms and their relations were perfectly agreeable until December, 1894, and that they were in daily conference, lunching together, visiting together, conferring together about all of their partnership matters that were then pending and unsettled. That A. B. Dewey was a daily visitor at the office of C. P. Dewey, and that their relations were most cordial. To be sure, he says, they would have differences of opinion relative to certain business transactions, but when the matter was over and disposed of, there was no further feeling or thought in regard to it. In Mauerman's evidence he cites an instance where C. P. Dewey closed up a transaction for A. B. Dewey involving over a hundred thousand dollars, in September, 1894, and introduces a letter written by C. P. Dewey to A. B. Dewey in regard to these transactions in which C. P. Dewey addresses A. B. Dewey as "My Dear Brother," and closes up his letter, "Affectionately, Charlie." From this it must be apparent to the court that C. P. Dewey had the same knowledge relative to the condition of this bank that A. B. Dewey had. A. B. Dewey says that he knew it was insolvent and transferred his stock to evade his liability; and when he was sued he confessed the fact and paid up. (A. B. Dewey's evidence,

p. 164, pp. 263-268, pp. 155-163.) Hence we submit that when C. P. Dewey says that he never knew anything about the bank being insolvent until it failed, he certainly is not speaking the truth.

C. P. Dewey was a man of wide and varied experiences in the business world. He had been cashier of a large bank, he was therefore familiar with accounts, and being an intelligent man and a man of experience, he could very readily tell from an inspection of the bank as to what condition it was in financially. The fact is that C. P. Dewey transferred his stock to his step-son, Fred L. Jewett, under poor advice from an attorney, and with the understanding that all he had to do to escape his liability as a stockholder was to put his stock in the name of someone else; and this explains why it was that the stock was transferred to Jewett; and he possibly learned from a better legal adviser in December, 1894, that that would not be sufficient, and hence it was that he had Jewett trade his stock for Chicago real estate.

Let us now look at the manner in which C. P. Dewey traded his bank stock for real estate. (P. 270.)

On December 7, 8, and 9, 1894, he advertised his bank stock in the *Chicago Tribune* for trade for real estate, offering to assume incumbrance, and did exchange all his bank stock, to-wit, 105 shares, and twenty shares that belonged to Charles M. Hogg, for Chicago real estate, putting in a half section of land in Dundy county, Nebraska, in one trade, at $3,500, which land Israel testifies was worth $500; and in another trade putting in a quarter section of land in Rawlins county, Kansas, for $1,500, that was worth, probably, $300. In each instance he assumed an incumbrance that the owners were unable to pay, and the people with whom he traded in each instance testified that they knew nothing about the bank stock, and paid very little attention to it, and placed very little value upon

it, and that the principal inducement to the trade was to get rid of the incumbrance and get what cash they could, being unable to pay the incumbrance or the interest thereon, and that they paid little or no attention to the value of the Dundy county and the Rawlins county lands; they simply took them for what they were worth, and took their chances on it. They knew nothing about the bank nor its condition nor whether it paid dividends, and paid very little, if any, attention to the value of the bank stock or the real estate that they received in exchange for their property. (C. T. Killen's evidence, pp. 222, 223.)

C. P. Dewey was furnished, a large portion of the time, at least during 1893 and 1894, with daily reports from Randall the cashier. He and A. B. Dewey were in almost weekly communication by correspondence with Randall as to the condition of the bank. Under date of August 9, 1893, C. P. Dewey, writing to J. A. Randall, says (C. P. Dewey's evidence, p. 43):

"It takes only a few moments to compile a statement of your cash balances, and I would like to hear from you every day, if possible, giving any other items of interest that may occur, until business over the country becomes more settled."

C. P. Dewey had held certificates of deposit in this bank for $3,000 since September, 1893. He had frequently called on the bank to pay the same, but the bank was unable to do so, and it still owed both C. P. and A. B. Dewey each certificates of deposit of $3,000, or a total of $6,000 at the time it failed; and during none of the time between September, 1893, and the time the bank failed, had they ever been able to collect these certificates of deposit. One of C. P. Dewey's certificates of deposit for $1,000 was sent out in the spring of 1895 by express. The express agent had a certificate of deposit of his own and he collected that first, and when he presented the C. P. Dewey certificate the bank was unable to pay it and it was returned.

This was the only certificate sent by express. Before that they had been sent in the usual way, by mail or to the bank. (C. P. Dewey's evidence, p. 273.)

The various letters of complaint and criticism from the comptroller's office were sent to the Deweys for inspection and examination. They kept in close touch with the bank and knew exactly what was going on and knew the nature and character of the bank's assets perfectly, and therefore must have known of their worthless character.

It is rather a remarkable coincidence that C. P. Dewey thought so much of Chicago real estate in December, 1894, but he seemed to have gotten a sufficient amount of this real estate as soon as he had disposed of all his bank stock. The only real estate that he traded for or purchased at about that time or any time since then was simply what he could trade his bank stock for, no more, no less. He traded no other stocks of any kind on this real estate, except the First National Bank stock of Orleans. (C. T. Killen's evidence, pp. 222, 223.)

Let it be remembered that when the Deweys purchased their stock from Burton & Harvey they guaranteed all the notes in the bank and that the bank should always pay ten per cent dividends. Yet they traded it for unimproved outside lots that produced no revenue.

To sum up: Insolvency of the bank in 1894 and 1895 is shown conclusively.

(1.) For the last four or five years that the bank existed, its principal business was renewing old notes that had been in the bank for years, occasionally collecting interest thereon.

(2.) The capital of the bank was $50,000. Of this over $30,000 was loaned directly and indirectly to Burton & Harvey, and was wholly uncollectible.

(3.) Over $15,000 was tied up in a bank building, furniture, and fixtures, which, several years later, in better times, did not prove to be worth a fraction of that sum.

(4.) Some $68,000 of loans and discounts which were in the bank when it failed were the same notes that were in the bank at the time of the stock transfers, and, were worthless.

(5.) During the years 1895 and 1896, only about $1,000 of miscellaneous deposits were in the bank.

(6.) The bank was kept alive after Dewey sold his stock by the use of $20,000 of state money, $4,000 of Harlan county money, and $6,000 loaned by the Deweys. *The state and county moneys were in the bank in violation of law, and were a source of danger rather than of security.*

It is equally clear that C. P. Dewey knew the bank was insolvent.

(1.) In 1891, the Deweys and C. M. Hogg acquired 260 shares of the stock of the bank, a controlling interest, and they had a controlling interest at the time of the transfers.

(2.) The Deweys operated in unison in the management and control of the bank and in disposing of their stock.

(3.) The Deweys took an active part in the management, conduct and policy of the bank, attending each of the stockholders' meetings, and often visiting the bank.

(4.) They were supplied with numerous lists of all of the loans and discounts of the bank.

(5.) During the years 1893 and 1894, the cashier of the bank sent them frequent reports of its condition.

(6.) In March, 1894, they wrote to Burton that they had been "advancing large sums of money to bolster up and keep *Burton & Harvey and the bank running.*"

(7.) At the time of the transfers, Burton & Harvey, who

owed the bank over $30,000, were indebted about $25,000 to the Deweys, and the latter held all of the assets of Burton & Harvey as security. They knew that Burton & Harvey were unable to pay taxes or interest and that their paper, held by the bank, was worthless.

(8.) Their letter of March 26, 1894, shows that they knew that to keep the bank running they had to bolster up Burton & Harvey, debtors to them personally, whom they knew to be insolvent.

(9.) During the years 1893 and 1894, C. P. Dewey loaned to the bank several thousand dollars to keep it afloat, but he required collateral security, and when the bank failed, it owed him $3,000, he had not been able to collect.

Finally, the purpose of the transfers was to escape the obviously impending liability.

(1.) C. P. Dewey was so eager to get rid of the stock that he advertised it for trade for real estate, offering to assume encumbrances.

(2.) He traded for encumbered lands of speculative value, assuming encumbrances, and hoping to come out even, or with as little loss as possible, so at any event he was rid of the stock.

(3.) The transferrees took the stock without inquiry and without caring about its value, desiring to get rid of encumbrances and liability for deficiency.

(4.) The transfers by both the Deweys were so made as to show a simultaneous and systematic effort by both to dispose of their holdings. A. B. Dewey says that such was the fact and that the transfers were made under the advice of an attorney, for the express purpose of evading liability.

We submit that these several circumstances demonstrate

the insolvency of the bank, Dewey's knowledge thereof, his purpose to evade liability. The question before court is whether his plans to that end shall receive judi sanction.

F. M. HALL,
ROSCOE POUND,
E. E. PRUSSING,
Solicitors for Appellan

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MAR 2 1905
JAMES H. MCKENNEY,
Clerk.

In the

Supreme Court of the United States.

October Term, 1904.

No. 220.
(File No. 530.)

JOHN M. MARSHALL, as Executor of the Peru National Bank, of Peru, Nebraska,
Appellant,
vs.
THEODORE DENNEY and THEODORE T. MILLER, as Executors of the Last Will and Testament of Charles P. Denney,
Appellees.

Appeal and Cross Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF APPELLEES.

JOHN F. WILSON,
NATHAN G. MOORE,
WILLIAM R. McKEVENE,
Counsel for Appellees.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 220.

(Vide No. 530.)

JOHN W. McDONALD, as Receiver of the First National Bank of Orleans, Nebraska, *Appellant,* *vs.* **CHAUNCEY DEWEY and CHARLES T. KILLEN, as Executors of the Last Will and Testament of Charles P. Dewey,** *Appellees.*	Appeal and Cross Appeal from the United States Circuit Court of Appeals for the Seventh Circuit.

STATEMENT.

This case involves the liability of the estate of Charles P. Dewey to respond to an assessment by the comptroller of the currency of $86 a share upon 105 shares of the capital stock of the First National Bank of Orleans, Nebraska. All of the 105 shares were sold, out and out, by Dewey in the months of December, 1894, and January, 1895. Eighty shares were duly transferred upon the books of the bank within a few weeks after the sale. The remaining twenty-five shares had been previously transferred by Dewey to his agent,

Frederick L. Jewett, and stood upon the books of the bank in the name of Jewett when the bank went into the hands of a receiver on or about the 20th of May, 1897, although they had been sold by Dewey.

The bank continued as a going concern for about two years and five months after Dewey had sold his stock out and out. No question is raised on the record as to the good faith of the sales as between Dewey and his vendees. After the sales were completed Dewey retained no interest of any kind in the stock.

The Circuit Court found that "the bank was insolvent in December, 1894, and January, 1895, at the time Dewey sold his 105 shares of stock in this proceeding, and that *Dewey knew or ought to have known* that fact and that he cannot escape his stockholder's liability for debts of the bank owing at the time he sold his stock and not discharged at the time of the bank's failure." (Rec., 275.)

The Circuit Court further found "that except as to the debts due from the bank over and above its valid assets no one was interested in Dewey's motives or acts with reference to his stock, *since no evidence has been introduced tending to show any fraud upon the creditors;* the liability sought here to be enforced against Dewey is simply that implied in his ownership of said stock; that *being charged with knowledge of the bank's insolvent condition* the sale and transfer of his stock to some other party did not release him from his liability for the bank's then existing debts; the transfer was void as to creditors representing indebtedness of the bank then in existence but not as to subsequently accruing indebtedness." (Rec., 275.)

The Circuit Court therefore entered a decree for Dewey's ratable share of the debts of the bank which were in existence at the time of the transfer of his stock, and which were unpaid at the time the bank went into the hands of a receiver. The amount of the decree was $585.48. (Rec., 278.)

There was no finding by the Circuit Court that Dewey had transferred his stock with intent to relieve himself from stock liability or with intent to defraud the creditors of the bank.

No error was assigned in the Circuit Court of Appeals upon the findings of fact mentioned, nor was it assigned for error that the court had erred in not finding that Dewey's transfer was made with fraudulent intent, to relieve himself from stock liability. (Rec., 280.)

The Circuit Court of Appeals reversed the decree and directed a decree against Dewey upon 25 shares. A cross appeal had been prayed from the original decree by Dewey and a further cross appeal has been prayed by his executors to this court.

The following cross errors have been assigned:

IN THE COURT OF APPEALS.

1st. The court erred in finding as a fact from the evidence adduced that the First National Bank of Orleans, Nebraska, was insolvent in December, 1894, and January, 1895, at the time the respondent Charles P. Dewey sold his one hundred and five shares of stock in said bank in question in this proceeding, and that this respondent Charles P. Dewey knew, or ought to have known of such insolvency, and that this respondent is liable upon his stockholder's liability for the

debts of the bank owing at the time he sold his stock and not discharged at the time of the bank's failure.

2nd. The court erred (in the absence of affirmative evidence by the complainant, and finding by the court, that the respondent's transferrees were financially irresponsible, when said stock was sold and transferred to them) in holding that said sale and transfer of the respondent's stock did not release this respondent from the statutory liability for the said bank's then existing debts and that said transfers were void as to creditors representing indebtedness of the said bank then in existence.

3rd. The court erred in finding that said bank was insolvent in December, 1894, and January, 1895, notwithstanding that the uncontradicted evidence shows that said bank continued as a going concern in the ordinary course of business until May 20, 1897, two years and five months thereafter. (Rec. Cross. App., 4.)

IN THE SUPREME COURT.

1. Said Circuit Court of Appeals erred in finding and adjudging that Charles P. Dewey was liable for the full assessment of $86 per share on twenty-five shares of the stock of the First National Bank of Orleans, Nebraska, and in reversing the decree in said cause and remanding said cause to the United States Circuit Court for the Northern District of Illinois with directions to enter a decree against said Dewey for the amount of said assessment.

2. Said Circuit Court of Appeals erred in holding that the sale and transfer by Charles P. Dewey, of his stock in said bank, did not release him from all liability for said bank's debts.

3. Said Circuit Court of Appeals erred in holding that said First National Bank was insolvent in December, 1894, and January, 1895, notwithstanding that the uncontradicted evidence in the record shows that said bank continued as a going concern and in the transaction of its ordinary business until May 20, 1897. (Rec. Cross. App., 26.)

We contend that

First. The only question presented by the record is whether a sale of stock in a going bank, made by a stockholder with actual or imputed knowledge that the bank is insolvent, is voidable under all circumstances.

Second. A sale of stock in a going bank with actual or imputed knowledge of the insolvency of the bank can only be avoided if it results in injury to creditors.

Third. The record in this case does not establish that Dewey knew or ought to have known of the insolvency of the bank at the time he made his sale or that the bank was in fact insolvent.

Fourth. In any event Dewey's estate should only be held for the *pro rata* share of the debts of the bank existing at the time of his transfer and which remained unpaid at the time of the appointment of the receiver.

Fifth. The sale of the 25 shares should have been sustained by the Court of Appeals.

ARGUMENT.

THE ONLY QUESTION PRESENTED BY THE RECORD IN THIS CASE IS WHETHER A SALE OF STOCK IN A NATIONAL BANK, IN OPERATION AS A GOING CONCERN, AND MADE WITH ACTUAL OR IMPUTED KNOWLEDGE OF THE BANK'S INSOLVENCY, IS UNDER ALL CIRCUMSTANCES VOIDABLE BY THE RECEIVER.

We respectfully submit that counsel for appellant are under a misapprehension as to the question which was submitted by the record to the Circuit Court of Appeals and decided by that court. Counsel argue in this court the proposition that a sale of stock by a stockholder in a national bank *not in good faith, but made to avoid liability upon the stock*, is void as to creditors.

As we have already stated, there was no finding by the Circuit Court that the sale by Dewey was made in bad faith to avoid liability as a stockholder. This was a contested proposition, and if counsel for appellant were not satisfied with the court's ruling thereon, they should have brought the matter to the attention of the Court of Appeals in their assignments of error. The Circuit Court expressly found that there was no evidence tending to show any fraud upon the creditors. (Rec., 275.) This was equivalent to a finding that there was no bad faith or fraudulent intent. The decree against Dewey was based upon the proposition that being chargeable with notice of the bank's insolvency, he could not sell his stock and avoid liability for existing debts.

Counsel for the receiver were evidently satisfied that the concurrence of the two facts, namely: the insolvency of the bank and the seller's knowledge thereof, was sufficient to charge Dewey with liability, regardless of whether his sale was made in good or in bad faith.

The assignments of error in the Court of Appeals were on this theory. The errors appear on page 280 of the record. The first one relates to the action of the Circuit Court in holding Dewey only for debts in existence at the date of the sale of his stock.

The second error assigned raises no specific question. The third error assigned is the one upon which the Court of Appeals acted. It reads as follows:

"That after the court had found that the bank was insolvent in December, 1894, and January, 1895, the date Dewey sold his one hundred and five shares in question in this proceeding, and that Dewey knew or ought to have known that fact, he should have entered a judgment or decree in favor of complainant and against the said Charles P. Dewey for the full amount of the assessment upon the stock of the bank on the one hundred and five shares of said stock owned by the said Charles P. Dewey."

The fourth and fifth errors assigned were sustained by the Court of Appeals. The court directed that a decree be entered against Dewey upon the 25 shares mentioned in the two assignments of error. The remainder of the assignments of error relate to the action of the Circuit Court upon certain specific claims passed upon by the court. They do not in any way relate to the question now under consideration.

The foregoing assignments of error simply present the question whether the concurrence of the two

facts,—that the bank was insolvent and that Dewey knew or ought to have known that fact,—was sufficient to charge him with liability on his stock.

Unless the existence of these two facts of itself results in a necesary implication of bad faith and intent to escape stock liability, then the question of the effect of bad faith and actual intent to escape stock liability was not raised by the assignments of error or presented to the Court of Appeals for decision.

An examination of the opinion of the Court of Appeals shows that they decided that the mere fact of insolvency and actual or imputed knowledge thereof was not sufficient to charge Dewey with liability. The court said, in rendering its opinion:

"What are the conditions without the existence of which such a former stockholder cannot be held?

He cannot be held unless the bank was insolvent at the time of the transfer, for the creditors would not be injured. * * *

He cannot be held unless he knew or ought to have known that the bank was insolvent at the time of the transfer, for an out and out sale, found to have been made in *good faith*, cannot be impeached. But this negative does not affirm that he is liable if merely the two conditions concur, insolvency and his actual or imputed knowledge thereof. *In this case, however, it is asserted that the concurrence of the two conditions establishes liability;* * * * *We apprehend no true reason for holding that the mere concurrence of the bank's insolvency and the stockholder's actual or imputed knowledge thereof inevitably and without any other condition establishes the bad faith, the fraudulent intent, of the selling stockholder.* * * * The supposed liability would charge the selling stockholder with the fraudulent intent to cheat the bank's creditors, even though he had diligently sought and had succeeded in finding a purchaser, who was willing to

take the chances of the bank's ultimate failure and suspension and who was amply able to respond to an assessment. We conceive that a sale of the character instanced could be made in perfect good faith, that the transfer of the shares could be effected on the books of the bank in accordance with the statute and the by-laws of the bank and that again in accordance with the statute, the purchaser would succeed to all the rights and all the liabilities of the former holder of such shares." (Rec., 296-297.)

It is obvious that if the Court of Appeals had been of the opinion that the record disclosed evidence of bad faith and intent to defraud creditors other than that involved in a sale with knowledge of insolvency, the foregoing discussion was unnecesary.

It will be seen that the Court of Appeals therefore expressly overruled the contention that a sale with actual or imputed knowledge of insolvency of itself establishes bad faith and fraudulent intent and is sufficient to charge the selling stockholder.

This was the question presented by the assignments of error and the question was decided adversely to the appellant. The court then proceeded to discuss what would be necessary in addition to insolvency and imputed knowledge thereof to charge the stockholder. But this discussion was upon the express assumption that a sale with imputed knowledge of insolvency was conclusive evidence of bad faith. The court said:

"But even if it were conceded that such a sale, in and of itself, conclusively evidenced the bad faith and fraudulent intent of the seller, a right of action in the receiver as the representative of the creditors would not be established. Surely, if the purchaser responded to the assessment levied on the transferred shares, the receiver should not be permitted to maintain a suit against the seller. Surely, if the purchaser was able

and compellable to respond, the receiver should not be permitted to sue the seller or the purchaser at his election, but should be required to collect from the purchaser who had succeeded to all the rights and liabilities of the seller. It is not enough that a sale be fraudulent as to creditors,—the creditors must be injured by the fraud; and they are not injured if they have a direct and primary means of collecting their debts, without resort to the secondary means of setting aside the fraudulent sale. The argument results in the conclusion that *the mere concurrence of the bank's insolvency and the selling stockholder's actual or imputed knowledge thereof does not make out a case.*" (Rec., 297.)

The decision of the Circuit Court that the concurrence of the two facts mentioned did make a case was therefore squarely overruled on the contention raised by appellant's third assignment of error.

Counsel for appellants now contend in this court that the Court of Appeals held that a sale by a stockholder of stock in a failing bank, with knowledge of its insolvency, and with a specific intent to avoid liability and to defraud creditors, will not release him from liability to creditors. The Court of Appeals did not so hold. It held that a sale with actual or imputed knowledge of insolvency does not conclusively establish bad faith, but even if it does, that additional grounds of liability would have to be asserted. The question, however, what effect actual bad faith, and an actual intent to escape liability, would have upon such a sale, was not presented to the Court of Appeals by the assignments of error.

The assignments of error in this court raise substantially the same question as that raised in the Court of

Appeals—that insolvency and knowledge thereof are sufficient to charge the selling stockholder.

The first assignment of error is that the court erred in holding that the insolvency of the bank and Dewey's knowledge thereof were not sufficient to create liability. The third assignment is to the same effect. The fourth assignment expressly states that the court erred in holding and deciding that "the mere concurrence of the bank's insolvency and the selling stockholder's actual or imputed knowledge thereof does not render him liable." (Rec., 311, Brief 5.) The fifth and sixth assignments of error are not in point.

The second assignment of error does not raise the question of the effect of bad faith or of an actual intent to escape liability upon a sale by a stockholder. The Court of Appeals may have erred in the holdings complained of in this assignment. The concurrence of other facts than the three specified may have been sufficient to charge Dewey. But if such facts were not called to the court's attention in some proper manner, then the court was justified in directing a decree for Dewey, if the facts brought to the court's attention by the assignments of error, namely, insolvency and knowledge thereof, were not sufficient to charge him.

We submit that counsel should be confined in this court to the errors raised in and passed upon by the Court of Appeals; that they should not seek a reversal of the judgment of that court upon points which were not properly brought to the attention of the court or passed upon therein.

Counsel staked their case in the Court of Appeals upon the proposition that a sale of stock with actual or

imputed knowledge of the bank's insolvency is not sufficient to relieve a stockholder from liability for the bank's debts.

If that proposition is unsound then the action of the Court of Appeals, in rendering judgment against the appellant, should be affirmed.

The proposition stated entirely ignores the question of good faith and the intent to avoid liability, unless bad faith and an intent to avoid liability will be inferred under all circumstances from such a sale.

We submit that the holding of the Court of Appeals, that there is "no true reason for holding that the mere concurrence of the bank's insolvency and the stockholder's actual or imputed knowledge thereof inevitably and without any other condition establishes the bad faith the fraudulent intent of the selling stockholder" (Rec., 296), is sound. Otherwise there can be no such thing as a transfer of bank stock in good faith after the bank's assets become less than its liabilities and such fact becomes known to its stockholders. Indeed the proposition goes further; it asserts that there can be no transfer of bank stock in good faith if the stockholders have *imputed* knowledge that the bank's assets are less than its liabilities. The rule contended for would result in many cases in saddling stockholders for years with an uncertain liability which they could in no possible way escape. It would materially affect the value of bank stock as an investment.

Good faith and the absence of fraudulent intent would count for nothing.

The selling stockholder might sell with actual intent to benefit creditors of the bank and a sale might so

result. In many cases the stronger stockholders of a failing bank take over the holdings of the weaker stockholders in an attempt to give added credit to the bank and to prevent its failure. In such a case although the purchasing stockholder might be much better able to respond to an assessment than the selling stockholders, and the entire transaction might be actuated by motives of good faith, nevertheless the law would charge the selling stockholders with an intent to defraud creditors

Counsel for appellant have not discussed the proposition that a sale with knowledge of insolvency necessarily establishes bad faith and a fraudulent intent of the selling stockholder. They argue, on page 20 of their brief, that as a matter of policy all sales of stock in insolvent banks, made knowingly, should be voidable, but they cite no authority in support of the proposition. Their main contention is that a sale with actual or imputed knowledge of insolvency, and *made with a fraudulent intent to escape double liability* is voidable. They argue that in the Hayden case this court "rested the whole matter on the question of the intent with which the transfer was made." (Brief, 11.) They discuss at length the effect of an intent to avoid liability.

They apparently agree with the Circuit Court of Appeals that another condition besides insolvency and knowledge thereof is necessary in order to charge a selling stockholder. This condition, according to their contention, is bad faith and fraudulent intent to escape liability.

But they have failed to cite to the court any finding of the Circuit Court to the effect that Dewey sold his

stock fraudulently or with an intent to evade liability. A transfer with such intent is a fraud on creditors, *Stuart* v. *Hayden,* 169 U. S., 1-8, and the Circuit Court found in the case at bar that no evidence had been introduced *tending* to show any fraud upon creditors. (Rec., 275.) This finding stands unattacked.

No reference to the evidence is made by counsel. They assume that the Court of Appeals found that the transfer by Dewey was not made in good faith, as an ordinary business transaction, but for the purpose and with the intent of avoiding liability. We submit that no such finding was made by the Court of Appeals.

In this connection the language of the court in *Earle* v. *Carson,* 188 U. S., 42-48, is pertinent. The court said that from various reasons "we think it results that the power to transfer stock like other personal property is not limited by the mere fact that at the time of the transfer the bank which was a going concern was insolvent in the sense that its assets if liquidated would not discharge its liabilities unless it be shown that the seller was aware of the fact and *had sold his stock to avoid the double liability which was impending.*"

We respectfully submit therefore that unless this court is prepared to hold that the mere concurrence of the bank's insolvency and the stockholders' actual or imputed knowledge thereof, without any other condition, establishes bad faith and fraudulent intent, then on the record made in this case the judgment of the Circuit Court of Appeals should be affirmed.

II.

A SALE OF STOCK IN A GOING BANK, WITH ACTUAL OR IMPUTED KNOWLEDGE OF THE INSOLVENCY OF THE BANK, CAN ONLY BE AVOIDED IF IT RESULTS IN INJURY TO CREDITORS.

We will discuss this proposition upon the assumption made by the Court of Appeals, that a sale in a failing bank, with knowledge of insolvency, is conclusive evidence of bad faith and fraudulent intent of the seller, although we contend that no question of Dewey's good or bad faith is presented by the record made in this case.

Was the Court of Appeals right in holding that such a transfer is not voidable unless it results in injury to the receiver or creditors?

A sale to a solvent purchaser, who is able to respond to an assessment, cannot in the nature of things result in actual injury to the receiver or creditors. Complainant's bill proceeded on the theory that it was necessary to allege and prove some injury as a ground for relief. It alleged insolvency of the transferees as constituting damage to the receiver.

In paragraph 4 of complainant's bill, it is alleged in reference to the transfers by Dewey to Jewett, that Jewett "was at the date last aforesaid pecuniarily an irresponsible person and a person from whom the amount of such assessment upon the shares of said capital stock, so held and owned by said respondent, could not be made by legal process or otherwise; so that your orator, by reason of the pretended sales of

said stock by and from the said respondent to said F. L. Jewett and the insolvency of said F. L. Jewett and his pecuniary inability to respond to damages as herein set forth, and stated, your orator is deprived of his remedy at law for the collection of his assessment of $43,000 made upon the capital stock of said First National Bank as is applicable to the 105 shares thereof owned or otherwise held by the said Charles P. Dewey." (Rec., 236.)

In section 6 of the bill it is charged that transfers from Jewett were fraudulent "and were made to persons who were financially irresponsible and unable to respond to the said assessments." (Rec., 237.)

The bill charges not only a fraudulent transfer but a consequent injury to the receiver representing creditors. It is now claimed in substance that the allegation of injury was immaterial and that Dewey should be held liable upon proof that he knew or ought to have known of the bank's insolvency; that such facts alone establish bad faith and a fraudulent intent on the part of Dewey.

This contention, if sustained, places a serious restriction upon the right of a bank's stockholders to transfer their shares.

The right to transfer national banking shares is conferred by Section 5139 of the national banking act, which reads as follows:

"Section 5139. The capital stock of each association shall be divided into shares of $100 each and be deemed personal property and transferrable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall in pro-

portion to his shares succeed to the rights and liabilities of the prior holder of such shares, and no change shall be made in the articles of association by which the rights, remedies or securities of the existing creditors of the association shall be impaired."

The right conferred by the statute is not merely to transfer the stock, but to have the purchaser succeed to all liabilities of the prior holder.

There are no restrictions in the statute upon this right of transfer. So far as the language of the statute goes every shareholder has full right to transfer his stock under all circumstances to a transferee who shall succeed to his rights and liabilities.

In the recent case of *Earle* v. *Carson,* 188 U. S., 42, this court had occasion to discuss the importance of the right of transfer conferred by this section. Quoting from the case of *Bank* v. *Lanier,* 11 Wallace, 377, the court said:

"The power to transfer their stock is one of the most valuable franchises conferred by Congress on banking associations. Without this power, it can readily be seen the value of the stock would be greatly lessened, and, obviously, whatever contributes to make the shares of the stock a safe mode of investment, and easily convertible, tends to enhance their value. It is no less the interest of the shareholder, than the public, that the certificate representing his stock should be in a form to secure public confidence, for without this he could not negotiate it to any advantage." (46.)

And this court ruled against a restriction which was sought to be imposed upon the right of transfer.

From these decisions it appears that the right of transfer by a stockholder is favored by the courts. On the other hand, the receiver in this case is seeking to enforce the double liability imposed by statute upon

shareholders, and in order to more successfully enforce it he seeks to have restrictions placed upon the right of shareholders to transfer their stock to persons who shall succeed to their liability for debts of the bank.

This court, in the case of *Brunswick Terminal Co.* v. *National Bank of Baltimore,* 192 U. S., 386, in construing a statute of Georgia imposing this double liability held that the statute was in derogation of the common law and should be strictly construed. While statutes of the United States, strictly speaking, may not be in derogation of the common law, as there is no common law of the United States, nevertheless the same principle of construction should be applied in construing a statute which imposes a liability in the nature of a penalty. The rights conferred should not be extended further than absolutely necesary to accomplish the purpose intended. The purpose of the statute imposing a double liability on bank stockholders is unquestionably the protection of creditors of the bank. The liability imposed is for the benefit of creditors only. It is not an asset of the bank. It cannot be collected by the bank or in its interest.

Richmond v. *Irons,* 121 U. S., 27-50.

The rights of both shareholders and creditors are based upon the statute. It may be conceded that the rights of the parties are contractual in their nature, as counsel contends, but nevertheless the terms of the contract are contained in the statute. The statute in express terms provides that the shareholder may transfer his stock and that the purchaser shall succeed to his rights and liabilities thereon.

It is now contended by the receiver that a restriction should be placed upon this right of transfer; that the shareholder should be restricted from selling his stock even to a solvent transferee after he knows that the assets of the bank are insufficient to pay its liabilities, and although the bank may continue as a going concern.

The restriction contended for places a burden upon the diligent stockholder which his less vigilant and careful associate escapes. The stockholder who takes an interest in the affairs of the bank, and endeavors to keep himself posted, runs the risk of making discoveries which will deprive him of his full statutory right to dispose of his stock. The less vigilant and careful shareholder escapes this penalty.

As the Court of Appeals suggested in its opinion, the restriction contended for puts a premium upon stockholders remaining in ignorance of the affairs of the bank. (Rec., 297.)

If this restriction is necessary to protect creditors from injury, there is basis for it. But counsel claim that it should be imposed regardless of such necessity. They claim the right to hold the selling stockholder even if the purchaser stands ready and willing to pay his assessment. They claim the right to enforce the assessment against both the purchaser and seller. In the case at bar, the receiver took a decree against the purchasers of Dewey's stock for the full amount of the assessment on 105 shares. (Rec., 274.) Where both purchaser and seller are able to respond, enforcement of the restriction results in collecting a double assessment, so that creditors not only are not injured by a

sale, but are better off because of it. In such a case other stockholders escape payment of their *pro rata* share of debts.

We submit that such a result is not within the intention of the statute. The purpose of the statute is met if creditors are protected from injury. Such protection is afforded if the restriction on the right of the selling stockholder is limited to sales to insolvent transferees.

When, therefore, a receiver seeks to restrict the statutory right of a shareholder to dispose of his stock, he should be required to prove that the sale complained of has injured creditors.

In all of the cases which we have been able to find in this court the restriction placed upon the right of a shareholder, in an insolvent bank, to sell his stock and escape liability has been limited to sales to irresponsible transferees.

In the case of *Bowden* v. *Johnson*, 107 U. S., 251, the court was called on to decide whether an out and out transfer of stock by a stockholder of a failing bank was sufficient to relieve him from liability. In its opinion, delivered by Mr. Justice Blatchford, the court found that the transferee was wholly irresponsible and unable to respond for any liability as a stockholder, and that this fact was known to the seller of the stock. The court said:

"Where the transferrer, possessed of information showing that there is good ground to apprehend the failure of the bank, colludes and combines, as in this case, with an irresponsible transferee, with the design of substituting the latter in his place, and of thus leaving no one with any ability to respond for the in-

dividual liability imposed by the statute, in respect of the shares of stock transferred, the transaction will be decreed to be a fraud on the creditors, and he will be held to the same liability to the creditors as before the transfer. * * * It was held by this court in *National Bank* v. *Case*, 99 U. S., 628, that a transfer on the books of the bank is not in all cases enough to extinguish liability. The court, in that case, defined as one limit of the right to transfer, that the transfer must be out and out, or one really transferring the ownership as between the parties to it. But there is nothing in the statute excluding, as another limit, that the transfer must not be to a person known to be irresponsible, and collusively made, with the intent of escaping liability, and defeating the rights given by statute to creditors." (261.)

In the same case the question was raised as to the effect of an answer under oath which had been put in by the respondent. The court said (page 262):

"Under the view we have taken of the case, the only material questions which are controverted are the knowledge and intent of Johnson, and the insolvency of Mrs. Valentine, and the knowledge of the latter fact by Johnson at the time."

In that case it was recognized by the court that the insolvency of the transferee was a vital and material fact, and the evidence bearing upon that fact was discussed at length. The doctrine laid down has been followed and recognized as the law in numerous cases since.

In the case of *Anderson* v. *Philadelphia Warehouse Company*, 111 U. S., 479, Chief Justice Waite, in delivering the opinion of the court, recognized the doctrine laid down in *Bowden* v. *Johnson* and said:

"If a registered owner, acting in bad faith, transfers his stock in a failing bank to an irresponsible person, for the purpose of escaping liability, or if his

transfer is colorable only, the transaction is void as to creditors."

In the case of *National Bank* v. *Case*, 99 U. S., 628-632, and in several other cases since, this court has quoted with approval the American doctrine, laid down by Mr. Thompson, concerning the transfer of stock in a failing corporation, as follows:

"Mr. Thompson states it thus, and he is supported by the adjudicated cases: 'A transfer of shares in a failing corporation, made by the transferrer with the purpose of escaping his liability as a shareholder, to a person who, from any cause, is incapable of responding in respect to such liability, is void as to the creditors of the company and as to other shareholders, although as between the transferrer and the transferee it was out and out.'"

See also:

Robinson v. *Southern National Bank*, 180 U. S., 295.

In the case of *Sykes* v. *Holloway*, 81 Fed. Rep., 434, Judge Barr, in commenting upon the doctrine laid down in *Bank* v. *Case*, said:

"This statement of the Supreme Court, as quoted, is as strong a statement as I have seen; but it will be observed that it is a material element that the transfer was made in a failing corporation for the purpose of escaping his liability as a shareholder, and that the purpose is coupled with the want of capacity of the transferee to respond to his liability." (Pages 436-437.)

A colorable transfer, or an out and out transfer to an irresponsible person, to escape liability, is not good against creditors of the bank.

Morse on Banks and Banking, Sec., 683.

The reason underlying the doctrine laid down in *Bowden* v. *Johnson* is that a stockholder cannot escape statutory liability by fraud accompanied by injury. He cannot, without consent of creditors, substitute for himself a person who is financially irresponsible. It is not enough to say that a stockholder is guilty of fraud when he transfers his stock in a failing national bank. In making the transfer he is in the exercise of a right conferred upon him by statute. If his transferee is amply solvent and able to respond to an assessment, his action, even if constructively fraudulent, is accompained by no injury and furnishes no subject of judicial cognizance.

In the case of *Clarke* v. *White*, 12 Peters, 178, at page 196, this court held:

"In equity, as at law, fraud and injury must concur to furnish ground for judicial action; a mere fraudulent intent, unaccompained by any injurious act, is not the subject of judicial cognizance. Truly, there are strong grounds of suspicion, but fraud ought not to be conceived; it must be proved, and expressly found."

See also:

Ming v. *Woolfolk*, 116 U. S., 599.

But it is contended that this court in the case of *Stuart* v. *Hayden*, 169 U. S., 1, has decided that proof of the insolvency of the transferree is unnecessary.

An analysis of the facts upon which the Stuart case was decided discloses that the court was not called upon to decide the question presented in this case. The case was heard on an appeal from the Circuit Court of Appeals for the 8th Circuit. The opinion of that court is found in the case of *Stuart* v. *Hay-*

den, 36 U. S., App., 462. The Court of Appeals in rendering its decision said:

"The court below was required to answer two questions and two questions only. They were: (1) Did Stuart make this transfer of his stock to Gruetter & Jores on December 23, 1892, with knowledge, or with such notice as would, if pursued with reasonable diligence, have given him knowledge that the bank was insolvent or that its failure was impending, and for the purpose of escaping from his individual liability on the stock? And (2) *did the transfer cause any damage to the creditors of the bank?* The trial court, after considering the evidence submitted, answered both these questions in the affirmative, and the only question remaining for us to consider upon this branch of the case is whether there was sufficient testimony to fairly warrant these conclusions."

The Court of Appeals after considering the evidence at length, found that the transferrees of the stock were insolvent and that the creditors were therefore damaged by the transfer. The case was decided substantially in harmony with the views contended for by the appellees in the case at bar.

Counsel claim in their arguments that the Court of Appeals found that at the time of the transfer Gruetter and Jores were solvent. The Court of Appeals did say that they were solvent before but insolvent immediately after the transfer was completed. They were therefore unable to respond to an assessment.

When the case reached this court the court accepted the views of the Court of Appeals upon the ultimate facts (Stuart case, *supra*, p. 14), one of which, of course, was that the transferree was insolvent. The case passed upon in this court was therefore whether a transfer by a stockholder to an irresponsible trans-

feree, made after the stockholder knew of the insolvency of the bank, and with intent to evade liability, was voidable. The decision of the court on these facts did not in any way conflict with its prior rulings. Under the facts presented the court was not called upon to decide whether a transfer to a solvent transferee, resulting in no injury to the creditors, would be voidable by the receiver of an insolvent bank. What the court actually decided and intended to decide is set forth in the case of *Earle* v. *Carson*, 188 U. S., 42, where the court, in discussing the opinion in *Stuart* v. *Hayden*, said:

"But in any event the observation relied upon was not essential for the decision of the case of *Stuart* v. *Hayden*, and moreover its meaning is clearly shown by the context of the opinion in which the difference between the American and English rule is pointed out. When this is borne in mind it will be seen that the expression in *Stuart* v. *Hayden* refered to but stated that difference, and, being taken in connection with other clauses of the opinion in that case, must be understood as implying that a real or out and out transfer would not be adequate to relieve the seller from his liability as a stockholder if the sale was made by him to escape his impending liability and *to a person whom he knew, or had reason to know, was financially irresponsible.*" (55.)

We submit that for the reasons given the Stuart case is not decisive of the case at bar.

Counsel for appellant have been unable to cite a case in which it has been held that a sale to a solvent transferree is voidable. In the case of *Marcy* v. *Clark*, 17 Mass., 330, the fact of the insolvency of the transferree was not mentioned in the court's opinion. It appears, however, that it was claimed before the jury

that he "was a man destitute of property," and that the jury's finding was in favor of the claimant.

The contention of appellant that a sale to a solvent purchaser should not relieve the seller seems to be based largely upon equitable considerations.

We contend that the question is not one of equitable rights but of statutory construction. What are the respective rights of the parties under the National Banking Act? Dewey claimed the right under the statute to transfer his shares without restriction and thereby to escape further liability. But an absolute right of this character might result in defeating the claims of creditors under another section of the statute and as the court said in *Earle* v. *Carson, supra,* it will not construe one section of the statute so as to destroy the essential features of another section.

But the converse of the proposition is equally true. Creditors seeking to enforce a liability under the statute will not be heard to insist upon restrictions upon rights conferred by other sections of the statute unless such restrictions are necessary to protect them from injury.

Creditors under such circumstances must necessarily assume the burden of showing that injury will ensue unless the restriction is imposed.

The decision of the Circuit Court of Appeals in this case goes no further than to impose such burden on the appellant.

The judgment of the court is supported by reason and authority and as to the eighty shares involved should be affirmed.

It remains to be considered whether the finding of the Court of Appeals, that the transferees of Dewey were not shown to be insolvent, is sustained by the record. The finding of the Court of Appeals on that proposition was unanimous. Judge Baker, speaking for the court, said:

"Without stating the items, it is enough to say that we all agree that there is *an utter failure of proof* of the insolvency of the various transferees, and on the contrary there is considerable proof that they were solvent and able to respond to an assessment." (Rec., 298.)

This finding of the Court of Appeals should be accepted unless it clearly appears that the court erred as to the effect of the evidence.

Stuart v. *Hayden, supra,* 14.

The record shows that 30 shares of the stock represented by certificates 96, 97, 100 and 101 were transferred by Jewett, as Dewey's agent, to Charles H. Killough. (Rec., 3.) These shares were transferred by Killough to J. G. Hatcher and by J. G. Hatcher to C. C. Hatcher. (Rec., 3.)

Killough testified that before making the trade he made inquiries about the stock. He testified "I would not have taken the stock if I had not thought it reasonably good." (Rec., 232.) He testified that he resided at 5506 Greenwood and was managing the business of W. B. Allis & Co., manufacturers of physicians' furniture.

In the transaction involving the sale of the stock Killough received $3,750 in cash, 30 shares of stock, and Dewey assumed an incumbrance of $1,500 on the property taken in exchange. (Rec., 231.)

No evidence as to Killough's financial standing was introduced by the receiver. He was called by the respondent and testified that at the time he purchased the stock he would have been able to pay an assessment upon it.

Counsel for appellant claim that in his cross-examination he testified that he was not able to pay an assessment upon it. The record is a mere abstract of the evidence and it is difficult to determine in what connection Killough made the statement which is contained on page 232 of the record. Counsel claim that as he could not pay the mortgage of $1,500 on his property it is pretty clear that he was insolvent. There is no evidence in the record that Killough could not pay the mortgage of $1,500 on his property. There were two pieces of property in the trade and he testified that one piece was clear. The Ashland subdivision property was clear. (Rec., 232.) This fact bears upon the question of Killough's ability to pay the mortgage on his other land.

There is nothing in this evidence to show that Killough was not amply responsible. The transaction was made in perfect good faith as between the parties. The purchaser understood that the bank was not paying dividends and he carefully examined the bank statement furnished, and after being fully advised he made the trade. (Rec., 232.)

He held the stock for a time "and then transferred it to Mr. Hatcher of Oak Park, who was regarded as a man of wealth." (Rec., 231.) No other evidence bearing upon the solvency of the Hatchers was offered.

Twenty shares, evidenced by certificate 103, were

sold to Charles Jouvenat. (Rec., 3-227.) The title to these shares was taken in the name of Jules W. Jouvenat, his son. (Rec., 227-228.) Charles Jouvenat testified that at the time of the transfer he had considerable property and was able to pay the amount of his stock from other resources than the property sold. (Rec., 230.) Jouvenat testified that before he made the trade he was informed as to conditions in Nebraska and knew that they were having dull times; that the bank had not paid a dividend for the year 1894. (Rec., 227.) He was out in Nebraska in October or November, 1894. (Rec., 228.)

As counsel states, a portion or part of the property held by Jouvenat was under foreclosure at the time of the sale. Jouvenat testified, however, that it was under Master's certificate when he bought it. (Rec., 229.) He further testified as follows: "In the first transaction I told Mr. Davis (his co-owner) we ought to have more of the stock because we were not getting the price we asked for our property. There was a mortgage on the property. It was a fine property and we wanted more money. Mr. Davis reported they refused to give any more." (Rec., 228.)

This statement is hopelessly inconsistent with appellant's contention that Dewey was trying to dispose of his stock to anybody who would take it for the mere purpose of avoiding his liability.

Jules W. Jouvenat sold 10 shares of the stock to Eli K. Gauger and 10 shares to William Mathewson, and Mathewson sold 6 shares to Andrew K. Park. (Rec., 3.)

Ten shares were evidenced by certificates 109 and 110, and were transferred by Jewett for Dewey to Emile Jouvenat. This sale was negotiated by Charles

Jouvenat. There is some question on the record whether this stock was purchased by Charles Jouvenat for himself or for his brother Emile. (Rec., 229.) There is no evidence in the record as to the financial standing of Emile Jouvenat, Jules W. Jouvenat, Eli K. Gauger, William Mathewson or Andrew K. Park, at the time of the transaction in controversy in 1894. The statements quoted by counsel in this connection refer to the time of the taking of the evidence in 1902.

Twenty shares, evidenced by certificate No. 104, were sold by Dewey to L. Eberhart, who in turn transferred the same to A. C. Kendig. (Rec., 3.) There is no evidence in the record as to the solvency of A. C. Kendig.

The evidence as to Eberhart was that he owned considerable real estate near Chicago. His son, F. S. Eberhart, testified that his father owned about 380 lots in Chicago Lawn, worth about $200 a lot (Rec., 154), only 40 or 50 of which were incumbered (Rec., 151); that he had a one-third interest in certain subdivisions worth about $60,000 and incumbered for $30,000. (Rec., 150-162.)

The stock mentioned comprises the 80 shares which were transferred on the books; the remaining 25 shares were sold to L. Eberhart, A. C. Kendig and R. Dubs. There is no evidence in the record as to the solvency of Dubs.

Counsel cite the case of *People's Bank* v. *Rickard*, 139 Cal., 285, in support of their contention that the burden was on Dewey to show the solvency of purchasers from his transferrees. In the case cited, there was no sale made by the insolvent transferree; it was merely argued that there might have been and the court

properly held that that fact was a matter for affirmative proof. But when the complaining party affirmatively establishes such sales and alleges the insolvency of the purchasers as a ground of injury, he must prove his case.

From the evidence we submit that the Court of Appeals was fully justified in its finding that the transferees were not shown to be insolvent.

But counsel state that whether or not the record shows affirmatively that the transferees were insolvent, it shows that their liability was not as valuable as that of Dewey.

We contend that it is immaterial whether the liability of the transferees was more or less valuable than that of the seller, provided the transferees were solvent and able to meet an assessment.

If Dewey had been worth a million dollars and had sold his stock to a man who was worth only five hundred thousand dollars, it might be claimed that the liability of the transferee was not as valuable as that of Dewey. The Court of Appeals was called upon to decide whether the record showed affirmatively that the transferees were not able to meet an assessment. The court was not called upon to decide a question of relative ability. The record in the case does not warrant a reversal of the finding of the Court of Appeals upon this question.

III.

THE RECORD FAILS TO ESTABLISH THAT DEWEY KNEW OR OUGHT TO HAVE KNOWN OF THE ALLEGED INSOLVENCY OF THE BANK OR THAT THE BANK WAS SOLVENT AT THE TIME OF HIS TRANSFERS OF STOCK.

In our argument up to this point we have assumed that the findings of the Circuit Court, that the bank was insolvent in 1894, and that Dewey knew or ought to have known thereof, are sustained by the record. We do not concede this fact. To the contrary it was claimed in the Court of Appeals, and we still claim that the record fails to support these findings.

If Dewey did not know of the alleged insolvency of the bank, then his sale of the 80 shares out and out, in good faith, clearly relieved him from any further liability thereon.

Earle v. *Carson, supra.*

In that event the judgment of the Court of Appeals, relieving Dewey from liability on the 80 shares, was clearly right although the court may have based its judgment upon other grounds.

We are entitled to be heard in this court in support of the judgment of the lower court without assignments of cross error.

The Stephen Morgan, 94 U. S., 599.

In support of the judgment of the lower court we are entitled to show that the judgment was right upon any ground disclosed by the record.

Ridings v. *Johnson,* 128 U. S., 212-218.

3 Ency. of Pleadings & Practice, 372.

Was the bank insolvent in 1894? The fact that it continued in operation as a going concern for two years and five months after that date with the consent of the comptroller of the currency raises a strong presumption of solvency. The evidence shows that frequent examinations of the bank were made by the comptroller. His reports and letters are shown at length in the record. (Rec., 69 to 86.) It was his duty to appoint a receiver in the event of insolvency and the presumption is that he did his duty in the premises.

The bank continued its business after 1894 in the usual course and paid more than two-thirds of all of the creditors to whom it was indebted in 1894. Its deposits in December, 1894, were $39,522.19. (Rec., 219.) Of these deposits only $11,930.21 remained unpaid when the bank went into the receiver's hands. (Rec., 276-258.) The Circuit Court found that of the latter amount $7,371.88, constituting the deposit of Harlan County and A. B. Dewey were also paid. (Rec., 276.)

This presumption of solvency appellant attempted to overcome by calling witnesses to testify that owing to bad crop conditions in Nebraska in 1894 and 1895 values in that state had disappeared and that the bank's debtors were all insolvent.

There is no contention that the book assets were in any way impaired. The bank had book assets sufficient in amount to meet all its liabilities. The contention is that the assets were poor; that continued bad times in Nebraska had resulted in universal bankruptcy.

Whether or not the bank was insolvent depended on whether its various debtors were able to meet their obligations and whether the securities held by the bank

were valuable or worthless. Whether Dewey knew of the bank's insolvency depended upon his knowledge of these conditions. In other words the bank's insolvency was a matter which could be determined only by patient investigation.

Dewey purchased his stock from a firm known as Burton and Harvey in 1891. (Rec., 180.) Burton was the bank's president and continued to be until it closed its doors. At the time of the purchase Burton and Harvey were conducting a large real estate business in Nebraska and enjoyed an excellent reputation. The bank's assets were investigated by Dewey at the time of his purchase and found to be in good condition. (Rec., 186.) Burton and Harvey also guaranteed them. These gentlemen were indebted to the bank at the time and the proceeds of the sale of their stock to Dewey were used in part to pay off these debts. (Rec., 17.)

Subsequently Burton and Harvey borrowed additional sums from the bank and also from Dewey individually.

The evidence shows that in December, 1894, Burton and Harvey were indebted to the bank in the sum of $6,000 and that there was other indebtedness, which is claimed to have been practically the indebtedness of Burton and Harvey, making the total indebtedness about $30,000. (Rec., 53 to 56, 57.)

The evidence also shows that Burton and Harvey were indebted to C. P. Dewey in the sum of about $9,000; they were also indebted to Albert B. Dewey, the brother of Charles P. Dewey, in a similar sum. (Rec., 46.)

To secure the payment of the indebtedness to the bank and to the Deweys, Burton & Harvey had transferred to C. P. Dewey a large amount of lands in Nebraska, together with mortgages and tax certificates, the estimated value of which, at the time, was about $100,000. The evidence tends to show that subsequently, owing to the conditions which prevailed in Nebraska during the years 1894, 1895 and 1896, these securities depreciated in value. But that these securities were valueless in 1894, or that the parties considered them valueless at that time, is not shown by the record.

At the time of the hearing George W. Burton, president of the bank, was dead, but Miss M. F. Burton, who had acted as assistant cashier of the bank, and who was called by the receiver, testified as follows:

"As to the transfers of property made by Burton and Harvey to C. P. Dewey, the property consisted of real estate; of land and town property. George's farm near town, 1600 or 1700 acres, property in town and land near Atwood, Kansas, and a piece of land in Harlan County that sold for $2,000. Also tax certificates and first mortgages that he had advanced. The par value of about $100,000 in addition to the real estate. 421 acres of Mr. Harvey's land near Arapahoe, and 320 acres in Phillips County, Kansas. At the time this property was transferred, it was considered more than ample security to the bank and to the Deweys. In December, 1894, I do not know how the Deweys considered it. It was considered so by the rest of us." (Rec., 141.) She further testified that the parties named considered themselves worth a large amount over and above their indebtedness from 1890 to 1895.

C. P. Dewey testified that he took security from Burton and Harvey for his advances to them, which he

considered entirely sufficient to protect himself as well as the bank. (Rec., 213.)

The contracts under which these securities were deposited with Dewey are not contained in the abstract of record, which was used in the Circuit Court of Appeals and which is now on file in this court. But there is no doubt that the securities were held as well for the benefit of the bank as for the Deweys individually. This appears from Dewey's own testimony (Rec., 213-218), and from the letters which were offered in evidence by the appellant. (Rec., 25, 29.)

The witnesses testified that after the bad crop condition in Nebraska in 1893, 1894 and 1895 land values practicaly disappeared. (Rec., 116.) The evidence on this proposition however is of the most general description. The witnesses did not attempt to place values upon the lands and securities held by Dewey. The inference from all the evidence is almost irresistible that if good crop conditions had followed the year 1894 in Nebraska the securities would have been realized upon and the bank of Orleans would not have gone into the hands of a receiver. (Rec., 170.)

It is in the record as we have shown that the parties concerned were of the belief that on account of the large amount of property which Burton and Harvey had put up as security their indebtedness to the bank was amply secured. The values put upon Burton's home farm, which was up as security (Rec., 213), was about $39,500, less a mortgage of $12,000. This property alone was practically sufficient to secure the indebtedness of Burton and Harvey to the bank.

In addition to the $30,000 of indebtedness due from

Burton and Harvey or their allied interests there was about $38,000 of other bills receivable held by the bank. (Rec., 219.)

There is no doubt that a large part of these bills receivable were subsequently not collected, but on the question of the value thereof in December, 1894, the testimony of the cashier of the bank, brought out by the receiver himself, is most important and conclusive upon the appellant. He testified, in response to questions by counsel for appellant:

"December 1st, 1894, there ought to have been with proper management somewhere over $20,000 to $25,000 collected; they could too. The balance of course were doubtful. Some of them were worthless. December 1, 1894, just at that particular time, and not what might have been done later,—it is not my opinion that if just at that particular time there had been an attempt made to realize and force the collection of the bank's paper and close up the affairs of the bank, it is my opinion that it would have paid out, if it had been taken in hand by some one who had some interest in it, and looked after it carefully, with the amount of money on hand and the amount of notes that seem to have been paid afterwards, I believe the depositors could have almost been paid. Certainly the bank could not have paid while diverting the funds of the bank into other channels. Of course I was speaking of taking of what ought to have been received and applying it on the bank's indebtedness, and I believe the depositors could almost have been paid. There was something like $5,000 on hand at that time, available and in bonds in circulation and five per cent. of the redemption fund and a little premium on bonds that ought to have been realized and what we ought to have gotten out of the other assets it seems to me might have been managed so that the depositors might have been paid." (Rec., 66-67.)

Randall also testified in the same connection that

some of the larger notes, which had been on the books for many years, were subsequently paid up. (Rec., 67.)

Both Randall and Miss Burton, the assistant cashier, testified that George W. Burton, the president of the bank, was very lenient with debtors and that many of the notes could have been collected if a little pressure had been brought to bear. (Rec., 140.)

In addition to the assets mentioned the bank had its banking building and real estate in Orleans which cost the bank over $13,000. (Rec., 89, 63.)

This property was subsequently sold by the receiver for $2,500. (Rec., 102.) The purchasers testified that they stood ready to pay at least $8,000 for the property; that they bid no more than $2,500 because the receiver stated that it would be sold at that price. (Rec., 167, 168.)

This evidence goes to prove that the First National Bank was in fact solvent in 1894 in the sense that its assets were sufficient to pay off its depositors.

The appellant called P. O. Hedlund, former receiver of the bank, who testified to the worthlessness of the assets.

This testimony was given eight years after 1894. In the meantime events, which were sufficient to overwhelm any community, had intervened. But the witness attempted to give the list of debtors and to state in each particular case whether the man was solvent or insolvent in 1894. He testified as follows:

"The financial conditions were bad in 1893, 1894 and 1895 in and around Orleans, Nebraska, caused by failure of crops, quite a panic over the country. The loss

of crops was total, and the people were in distress and values absolutely disappeared and many were in want and relief was given freely. Times were a great deal better in 1897 than in 1894. * * * I knew most of the persons who gave these notes and bills receivable to the bank personally, and of their financial standing." (Rec., 116.)

Yet in his testimony, concerning the specific items, he does not undertake to state which ones of the debtors he knew personally and which ones he did not know.

He testified that he sold a large part of the bills receivable in December, 1898, for a small amount. (Rec., 102.) It does not appear that effort to collect the various amounts by suit was resorted to in any case, with the possible exception of the claim against the Lincoln Salt Lake Company. (Rec., 102.)

M. B. Holland and C. T. Simpson also testified to the insolvency in 1894 of many of the bank's debtors. (Rec., 142-143.)

Their evidence was given many years after the events concerning which they testified, and was of necessity colored by their recollection of the hard times and misfortunes which had intervened between 1894 and the time of giving their testimony.

What constitutes insolvency as a matter of law? Will a bank be held to be insolvent which for two years has continued to transact business in its usual way?

In was held in *Minton* v. *Stallman*, 96 Tenn., 98, that a bank is not insolvent as long as it is meeting its liabilities in due course of business and there is an expectation entertained on reasonable grounds of belief by those who are familiar with its business that it will continue to meet its obligations.

Insolvency is that condition of affairs in which a merchant or business man is unable to meet his obligations as they mature in the usual course of business. An act of insolvency takes place when this condition is demonstrated and the person has actually failed to meet some of his obligations.

Dodge v. *Martin*, 17 Fed. Rep., 660.
Buchanan v. *Smith*, 16 Wall., 277.

It was held in *Dodge* v. *Martin* that a bank is insolvent when from the uncertainty of being able to realize on its assets in a reasonable time a sufficient amount to meet its liabilities, it makes an assignment by which the control of its affairs and property passes out of its hands.

Although the liabilities of a corporation may greatly exceed its assets, it is not insolvent in such sense that its assets become a trust fund for *pro rata* distribution among its creditors, so long as it continues to be a going concern, and conducts its business in the ordinary way.

Comfort v. *McTeer*, 7 Lea., 652, 660.
Publishing Co. v. *Wheel Co.*, 95 Tenn., 634.

Insolvency expresses the inability of a party to pay his debts as they become due in the ordinary course of business.

Toof v. *Martin*, 13 Wall., 47.

In the recent case of *Earle* v. *Carson*, 188 U. S., 42, this court took occasion to say that *mere inadequacy of assets of a bank to pay its debts was not insolvency, but that the true definition of insolvency is failure and consequent suspension of business.*

In view of these authorities, of the evidence cited and of the fact that the First National Bank of Orleans continued in business for two years and five months after the date when it is claimed that it was insolvent we contend that the Circuit Court was not justified in holding that the bank was insolvent in 1894. The fact that the bank continued in business for two years and five months was sufficient of itself to rebut the evidence on the question of insolvency introduced by the receiver. Evidence of witnesses given eight years after the events concerning which they were testifying and relating to facts of which they could have but a most superficial knowledge in any event was not sufficient to overcome the presumption of solvency growing out of the fact that the bank was able to continue in business for two years and a half.

The fact that the bank was able to continue in business for that length of time under the critical examinations of the comptroller establishes that its ultimate insolvency and suspension must have been caused by events other than those existing in 1894. If the entire community became bankrupt as the result of one crop failure in 1894 and all values disappeared, it is inconceivable that the comptroller would have permitted the bank to continue in business.

Farming communities do not succumb to one crop failure. But the disastrous year of 1894 in Nebraska was followed by a short crop in 1895. (Rec., 63.)

The bank was dependent upon a farming community. The looked-for relief after 1894 did not appear and the demoralization became complete.

But that the bank had sufficient good assets in December, 1894, to meet its debts, if the assets had been properly handled, is proven by appellants own witness. (Randall, Rec., 66.)

We submit that the record fails to establish a condition of the bank which can properly be termed insolvent.

But if the bank should be held to be insolvent, was Dewey chargable with notice of the fact?

It is obvious from what has been said that the only method by which the fact of the alleged insolvency of the First National Bank could be determined in 1894 was by a critical examination of the financial condition of the various debtors of the bank and of the conditions of the properties held by the bank. What evidence is there in the record that Dewey knew or ought to have known these conditions?

They were evidently not known to the bank examiners, otherwise the bank would not have been allowed to operate for a period of two years and five months after it was insolvent.

There is no evidence in the record to fasten knowledge of these conditions upon Charles P. Dewey. The evidence shows that he resided in Chicago; that after the purchase of his stock in 1891 he visited Orleans in January, 1893, in February, 1893 and in September, 1893. (Rec., 91.) He was not a director of the bank at any time or active in its management. He was elected vice-president in January, 1892, and continued as vice-president until January, 1895. The by-laws of the bank are not in evidence and it does not appear what the duties of the vice-president were. In

the absence of other evidence it is fair to presume that they were nominal and merely what the name implies—to act in place of the president.

The evidence shows that George W. Burton, the president, was active during the entire period from 1892 to 1895, and that Mr. Dewey was not called upon to exercise any active duties in connection with the bank.

Practically all of Dewey's transactions with the bank are shown by correspondence. This correspondence was in possession of the receiver and was offered in evidence. The letters which were actually written by Charles P. Dewey himself are shown as exhibits 59, 60, 61, 77, 64, 65, 71, 72, 73, 62, 78, 79, 80, 81, 83, 84, 85, 87, 88, 89, 90, 92, 93, and 96 to 106.

There is nothing in any of these letters to show that Dewey knew that the bank was insolvent or had any reason so to believe. There is nothing in the correspondence to show that he was kept informed as to the financial standing of the borrowers of the bank. During the financial crisis of the summer of 1893, Dewey asked for a daily statement of the condition of the bank, and it appears that such statements were rendered him for a time. These statements showed the condition of the bank's business at the expiration of each day's transactions. It can not be claimed that there was anything in these to post Dewey as to the solvency of the bank's debtors.

The evidence shows that at the time he purchased his stock there was an examination of the bank's assets and they were found to be good; furthermore that they were expressly guaranteed by Burton and Harvey,

from whom the stock was purchased. There is no evidence that during the visits which Dewey paid to Orleans he was informed that the assets of the bank were in bad condition or that facts were brought to his attention which would lead him to infer that fact.

A list of the notes of the bank was sent to Dewey about January 18, 1894. (Rec., 202.) This gives the dates of maturity of the various notes and of securities held therefor. Few of the notes are shown thereby to be long overdue and these only for small amounts. The assets of the bank were apparently in good shape.

The last statement received by Charles P. Dewey, concerning the condition of the bank, was a letter from the cashier under date of November 20, 1894, to C. M. Hogg. The evidence shows that this letter was shown to Dewey. (Rec., 170.) In this letter the cashier reports as follows:

"As to the notes, under the present conditions and arrangements I would have to report all good, for I think there was security turned over to C. P. Dewey sufficient to make every thing good. Of course this is held by him individually and not as trustee, but I think it will not matter, for I am sure he will handle the property placed in his name as will best protect the bank's interests. It will take some time to realize on this security, owing to the failure of crops here this year. Had this been a good year I feel that a large amount of this land would have been sold and many of the notes that on their face seem bad, would have been taken up. * * * I have no fears of any losses, but the larger proportion of our paper will have to be carried over."

The security referred to was security for the Burton & Harvey indebtedness. The balance of the assets were reported good.

This letter shows a belief, that owing to the crop failure of the year 1894, matters were in an uncertain condition, but that several years of good crops would straighten matters out.

There is no reason to believe from the evidence that Charles P. Dewey had any different opinion or any reason for a different belief. He testified positively under oath that such was his belief and that he had no reason to doubt the solvency of the bank. (Rec., 186, 187.)

There is nothing in the record which shows actual knowledge by Dewey that the assets of the bank were in such condition that the bank was insolvent. The officers of the bank evidently did not believe that they were. Why should Dewey, whose means of knowledge were limited, know more than the bank's *active* officers?

It was argued that many of the notes in the bank had been there for a long period of time and that this fact was sufficient to charge Dewey with knowledge that they were worthless. The evidence shows that the bank did business in a farming community and that it was necessary to carry borrowers for a long period of time. (Rec., 140.)

It is in evidence that the note of Dunlay Brothers for $5,145, which had been in the bank since 1891, was finally paid. This note was made the subject of express complaint in a letter of the comptroller of the currency which was brought to the attention of Dewey. (Rec., 74, 27.) Another note for the sum of $2,000 given by Pat Gibbon was also in the bank for many years and was finally paid. (Rec., 54, 67.)

The fact, therefore, that notes were held by the bank

for a long period of time did not indicate that they were bad. The fact was simply indicative of the manner in which banking business was done in that community.

The attempt to charge Dewey with notice of the condition of the bank's assets is based upon an inference that he must have known of the condition because witnesses of the receiver, eight years after the event, were willing to testify that the various debtors were insolvent in 1894.

We submit that this evidence is entirely inconclusive. No substantial evidence that Dewey actually knew of the condition of the bank's assets in 1894 was offered.

All that appellant has succeeded in proving definitely is that in the Fall of 1894 conditions were such that financial difficulties would follow unless the farming community was relieved by a series of good crops, and that such fact was generally recognized. This is very far from an actual showing of insolvency and worthlessness. That Dewey had any other knowledge or belief is not established by the record, and cannot be reasonably inferred.

But the most persuasive evidence of the bank's solvency is the fact that the comptroller permitted it to continue in active business for more than two years after 1894 and that it was able to meet its obligations from day to day during that period.

The comptroller knew the conditions in the financial world during 1893 and 1894. Bank failures were numerous. As a result it may be fairly presumed that bank examinations were rigid. The conditions in Ne-

braska were known to the comptroller. In February, 1897, he wrote to the bank:

"The comptroller fully realizes the condition of affairs existing in the locality in which your bank is situated and has been disposed to be as lenient as possible *consistent with duty.*" (Rec., 86.)

He knew the effect of these conditions upon the bank's debtors,—the effect of bad crops upon a farming community. With full knowledge of all the conditions, he permitted the bank to continue in business for more than two years after the date when appellant's witnesses swear that it was insolvent. This action amounted to an adjudication of the bank's solvency.

Eight years later the receiver seeks to stultify his chief by calling witnesses to prove that the bank was in fact insolvent in 1894 and should have been placed in a receiver's hands then. In proof of his contention, the receiver relies principally upon crop conditions in 1894—conditions which were fully known to the comptroller at the time.

We submit that the action of the comptroller at the time, followed by a successful operation of the bank for over two years, should have more weight in determining the bank's solvency than the guess work of witnesses eight years later.

The lower courts were, therefore, wrong in holding that the bank was insolvent in December, 1894, and that Dewey knew of its insolvency. On this ground, the judgment of the Court of Appeals as to the eighty shares should be affirmed.

IV.

DEWEY WAS LIABLE ONLY FOR HIS PRO RATA SHARE OF THE DEBTS OF THE BANK EXISTING AT THE TIME WHEN HE TRANSFERRED HIS STOCK AND WHICH REMAINED UNPAID AT THE TIME OF THE FAILURE.

Assuming, for the purposes of the argument, that the court shall be of the opinion that Dewey was liable to respond to an assessment upon the stock, the question arises whether his liability was for the entire assessment of $86 a share, or whether his liability was limited to his *pro rata* share of the debts existing at the time of his transfer and which remained unpaid at the time of the closing of the bank.

So far as we have been able to ascertain, this question has not been passed upon by this court.

The question presented is one of importance to stockholders. Can a liability for future debts be held over a stockholder for an indefinite period after he has sold his stock in a bank? Can creditors, who have become such after his transfer, and who on no possible theory could have trusted the bank upon the faith of his being a stockholder, subsequently compel him to respond for portions of their claims? If this is so, then stockholders who are dissatisfied with the management of a failing bank, who see its assets being dissipated and debts incurred against their protest, and without their approval, have no way of terminating their liability for such debts.

Executors, guardians and trustees would be powerless to protect their estates against future loss.

We contend that after a stockholder has sold his stock out and out, and has had it transferred upon the books of the bank, so as to give notice to the world that he is no longer connected with the bank, he should be relieved from liability for debts incurred by the bank thereafter.

The statute is susceptible of this construction. It reads as follows (Section 5151):

"The *shareholders* of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares."

The statute is in the present tense and relates only to existing shareholders. They are held to respond for the contracts, debts and engagements of such association while they remain shareholders. They are held liable to those who may be presumed to have trusted the association on the faith of their connection with it.

The statute provides a manner in which creditors shall be notified of the transfer of stock. The purpose of the statute is to furnish notice to future creditors.

In the case of *Lantry* v. *Wallace*, 182 U. S., 536, 554, this court said:

"The receiver sued in this case for the benefit of creditors, who, it must be assumed upon this record, knew nothing of the circumstances under which the defendant became a shareholder. They trusted the bank and *those who appeared on the list of shareholders required to be kept by section* 5210 of the Revised Statutes, which list, that section declares, 'shall be subject to the inspection of all the shareholders and creditors of the association.' Referring to that section, this court in *Pauly* v. *State Loan & Trust Co.*, 165 U. S.,

606, 621, 622, said: 'Manifestly, one, if not the principal, object of this requirement, was to give creditors of the association, as well as state authorities, information as to the shareholders *upon whom, if the association becomes insolvent, will rest the individual liability for its contracts, debts and engagements.*' "

In *Waite* v. *Dawley*, 94 U. S., 527, this court said that the act of Congress relating to publishing lists of bank's stockholders "was merely designed to furnish to the public dealing with the bank a knowledge of the names of its corporators and *to what extent they might be relied on as giving safety to dealing with the bank.*" (534.)

That the notice furnished is more than theoretical is illustrated in the case at bar. Miss Burton, the assistant cashier, testified with reference to the bank's deposits that "after they [the Deweys] sold the stock inquiries came and made them [deposits] fall off a great deal faster." (Rec., 138.)

It is said in Cook on Stock & Stockholders, § 261:

"It is a well settled rule of law that a transferrer of stock cannot be charged with corporate indebtedness incurred after the transfer has been regularly made and duly recorded in the corporate books. This rule follows as a matter of course from the fact that after registry of a transfer, not only has the transferrer ceased to have an interest in the corporation, but by the registry he has given notice to all future creditors of the corporation that they cannot look to him as security for their debts."

If a creditor of a bank uses ordinary diligence, he can always ascertain who the shareholders are before he extends credit to the bank. If he does not use such ordinary diligence, and extends credit upon an indefinite idea that there are shareholders who can be made

to respond for his claim, can he subsequently look to shareholders who had previously sold their stock out and out by a *bona fide* transfer and had the sale registered on the bank's books?

If a creditor extends credit to a bank upon the faith of the standing of the stockholders, then certainly he is guilty of negligence if he fails to avail himself of the ready means furnished by statute to ascertain who such stockholders are. He is not entitled to the protection of courts of equity.

The exact question involved here has been decided by the Supreme Court of Ohio, and upon a statute substantially similar to the section 5151 of the national banking act.

The section of the statutes of Ohio, passed upon by the Supreme Court of that State, is found in the revised statute of 1890, section 3258, and reads as follows:

"The stockholders of a corporation which may be hereafter formed, and such stockholders as are now liable under former statutes, shall be deemed and held liable in addition to their stock in an amount equal to the stock by them subscribed or otherwise acquired to the creditors of the corporation to secure the payment of the debts and liabilities of the corporation."

There is no substantial difference between this statute and section 5151 of the revised statutes quoted above.

In the case of *Peter* v. *Union Manuf'g Co.*, 56 Ohio State, 181, the Supreme Court of Ohio was called upon to determine whether a shareholder in a corporation of that state, who had disposed of 1,000 shares of his stock to an insolvent *for the express purpose, as he*

stated of escaping future liability to corporate creditors on account of the shares thus transferred, continued liable for debts of the corporation incurred after such transfer.

The Supreme Court of Ohio held that if the transfer was out and out and the shareholder retained no interest, express or implied, in the stock, then the sale was sufficient to relieve him from future debts of the corporation. The court, in giving its opinion, said:

"If the Circuit Court were of opinion that the transfer of the 1,000 shares of stock to an insolvent member of his family by Mr. Peter, his purpose in the transaction being to escape liability to future corporate creditors, was alone sufficient to continue in him their equitable ownership, and founded their judgment on that view of the question, we think their judgment in this respect was erroneous.

In the absence of a by-law on the subject, and treated simply as property, no reason is apparent for limiting the power of disposition over corporate stock within narrower bounds than those pertaining to other species of property. Under the decisions of this court the owner cannot, by a transfer of his stock, defeat the ultimate right of existing creditors to relief against him. But upon what grounds do future corporate creditors plant their rights to relief against one who had ceased to be a stockholder before their claims arose? If he had, in fact, disposed of his stock, and the stock had been transferred on the books of the corporation, as to such future creditors it was as if he had never been a stockholder. If the transaction was not *bona fide;* if it was a ruse or device by which he sought to hold himself out to the world as devested of his ownership, while by some understanding or agreement, express or implied, the transferee held it for him,—he doubtless would remain the equitable owner, and under the express words of our statute would remain liable to assessment to pay future corporate debts. If, however, the transaction is *bona fide,* and the shares transferred

on the proper corporate books, future creditors are not concerned with the motives which actuated the former owner. It was the right and privilege of such owner to sell to any purchaser who would buy, or to donate to any person who would accept the gift, his worthless corporate stock: and if, in such case, the transaction is completed by a transfer of the stock, persons who thereafter give credit to the corporation have no claim against such former owner. If the sale and transfer are absolute and made in good faith, the former owner does not thereafter remain the equitable owner by reason of the facts that the worthless stock passed, either by gift or sale, into the ownership of an insolvent transferee, and the sole object of the former holder in entering into the transaction was to escape liability for future debts of the corporation. In order to correctly apply these principles to the transfer made by Mr. Peter, the finding of facts should be made certain. It should show whether the sale was absolute, or whether, by some agreement or understanding, express or implied by the circumstances, the transferee held the stock transferred to her for his present or ultimate benefit. Judgment reversed in part and affirmed in part."

In the case just cited the question was squarely presented for decision. The seller of the stock testified that he had sold his stock for the express purpose of escaping liability for future debts. It was held that if the sale was out and out, and the seller reserved no interest in the stock he could not be held for future debts. The case is well reasoned. It is based upon a statute almost identical with the section of the banking act on the same subject.

Whether the liability of a shareholder extends to present or future debts of a bank has not been expressly decided in this court, but in the case of *Stuart* v. *Hayden*, *supra*, page 9 of the opinion, the court practically

intimated that such liability extends only to existing contracts. The court there said:

"Whether—the bank being in fact insolvent—the transferrer is liable to be treated as a stockholder *in respect of its existing contracts, debts and engagements*, if he believed in good faith at the time of the transfer the bank was solvent, is a question which in the view we take of the present case need not be discussed."

In another line of cases this court has held that only creditors who may be presumed to have extended credit to a corporation on the faith of an increase of stock or other stock liability are entitled to base claims thereon. In the case of *Coit* v. *Gold Amalgamating Co.*, 119 U. S., 343, a corporation subsequent to the creation of a debt, increased its capital stock. Six months later the new stock was cancelled, leaving the debt unpaid. A suit was brought to enforce the debt out of the increased stock. This court in its opinion said:

"The plaintiff had placed no reliance upon the supposed paid up capital of the company on the increased shares and therefore has no cause of complaint by reason of their subsequent recall." (347.)

To the same effect is *Bank of Ft. Madison* v. *Alden*, 129 U. S., 372.

In *Handley* v. *Stutz*, 139 U. S., 417, this court said:

"We have no doubt the learned circuit judge held correctly that it was only subsequent creditors who were entitled to enforce their claims against these stockholders since it is only they who could by any legal presumption have trusted the company upon the faith of the increased stock." (435.)

The principal of these cases is applicable to our contention. Creditors who trusted the bank on the faith of Dewey's connection therewith may look to him when the bank becomes insolvent. But creditors who became

such after Dewey sold his stock out and out and in good faith as between himself and his purchasers and after transfer of the stock was duly registered have no claims against him as they cannot be presumed to have trusted the bank on the faith of a connection which did not exist in fact and which they were bound to know did not exist.

The principle for which we contend is recognized in the case of *Stufflebeam* v. *DeLashmutt*, 83 Fed. Rep., 449, in which a stockholder, who had been defrauded into purchasing his stock and immediately rescinded the contract, was held liable nevertheless to pay his proportion of the assessment necessary to pay debts that were contracted by the bank during the period that he was the owner of the stock. The basis of the decision was the fact that creditors would be presumed to have extended credit upon the faith of his connection with the bank. As to such creditors the court could not relieve him even in case fraud had been practiced upon him.

In *Young* v. *Wempe*, 36 Fed. Rep., 354, the court held that stockholders were liable to be assessed equally and ratably to the extent of their statutory liability *for all debts existing while they held the stock*, and before they made a valid transfer of the same.

If it be contended that a person has no right to deliberately avoid future liability as a stockholder, we reply that this court has expressly held that pledgees of stock may take stock in the name of an irresponsible party without in any way indicating that the stock is

held as collateral and for the express purpose of avoiding liability.

Anderson v. *Philadelphia Warehouse Co.*, 111 U. S., 479.

Rankin v. *Fidelity Trust Co.*, 189 U. S., 245.

The answer of the appellant to our contention is that the theory is fallacious, because succeeding creditors have simply paid off prior creditors and should be entitled to the same rights.

This answer begs the question. It does not meet the proposition that future creditors have no right to trust a bank on the faith of the credit of prior stockholders.

Counsel further answers that voidable transfers are without effect and that the transferrer remains liable to assessment the same as if he had made no transfer. In support of this proposition counsel cite the cases of *Earle* v. *Carson*, *Stuart* v. *Hayden*, *Bowden* v. *Johnson* and *National Bank* v. *Case*. In these cases various transfers by stockholders were held to be void and inoperative, but in no one of these cases was the question here presented for decision decided by the court. The language used in the various cases cited must be held to apply to the facts before the court for decision and to refer to creditors who became such while the shareholder owned his stock.

It was also contended in the Court of Appeals that appellees are foreclosed from contending that they are not liable for all the debts of the bank by the decision of the comptroller in levying an assessment of $86 per share; that such decision is binding upon the shareholders and cannot be disputed. In support of this proposition counsel cited *Kennedy* v. *Gibson*, 8 Wall., 498;

Casey v. *Galli*, 94 U. S., 673; *Sanger* v. *Upton*, 91 U. S., 56; *United States* v. *Knox*, 102 U. S., 423; *Bushnell* v. *Receiver*, 164 U. S., 684; *National Bank* v. *Hawkins*, 174 U. S., 364.

These cases hold that the decision of the comptroller as to the necessity of appointing a receiver, of instituting proceedings against stockholders, and as to the amount to be collected from stockholders is conclusive, inasmuch as all such questions are matters within his judgment and discretion. The principles laid down in these cases are too well settled to be controverted, but in none of the cases cited was it held that the comptroller has the right to determine what stockholders are liable to assessment, or to determine who are stockholders for the purposes of assessment.

In the case of *Bank* v. *Hawkins*, *supra*, this court said:

"The Comptroller's act, in ordering the assessment, while conclusive as to the necessity for making it, involves no judgment by him as to the judicial rights of parties to be affected. While he, of course, assumes that there are stockholders to respond to his order, it is not his function to inquire or determine what, if any, stockholders are exempted."

The distinction between the cases cited by counsel and the case at bar lies within the sentence just quoted.

The comptroller has no jurisdiction to determine what are the judicial rights of stockholders in the matter of the assessment. A stockholder can show, in a suit brought by the comptroller, that he has transferred his stock in good faith and done everything necessary to have it transferred on the bank's books, and therefore is not liable to assessment, although his name appears on the books.

If it is the law, that a stockholder, who transfers his shares out and out, is not liable for future debts of the bank, certainly the comptroller cannot determine that he is so liable. This question is as much a judicial one, for the determination of the courts, as is the question whether the stockholder is liable at all. With such questions, which are judicial in their character, the comptroller has nothing to do. In this connection the decision of the United States Circuit Judge, in the case of *Moss* v. *Whitzel*, 108 Fed. Rep., 579, clearly presents the question involved. In discussing the various cases last mentioned the court said:

"These rulings go no further than what the language implies, and the language must be restrained to the subject-matter under consideration. The sense is, that whether or not an assessment on the stockholder shall be made, and the amount thereof, in the first instance, are solely matters of administrative policy and determination and are addressed to the discretion of the comptroller. But the Supreme Court has not held that a stockholder, when sued by the receiver, is precluded from defending on the ground that he is not a stockholder, or that he owes nothing as such stockholder, or that there is in fact no debt or obligation of the bank existing at the time of the suit against the stockholder. If this defense is not permitted to the stockholder when called upon to pay an assessment based upon such judgment not conclusive against him, when, where, and how is he to find relief from the unjust exaction demanded of him? He has not hitherto had his day in court. He had no hearing before the comptroller prior to the assessment. The statute makes no provision for such hearing before the comptroller. The comptroller acts upon reports laid before him by the receiver respecting the liabilities of the bank and its assets. On this *ex parte* showing he decides as to the necessity and amount of the assessment. This action of his is not reviewable. If the stockholder when sued by the receiver stands mute and suffers judgment to go by de-

fault, has he not had his day in court? Could he pay the judgment against him, and then have any standing anywhere in court to restrain the receiver from paying over the fund to the judgment creditor of the bank? It is said that the statute provides that, if there is any surplus in the hands of the receiver after the debts of the insolvent bank are paid, it would go back, *pro rata*, to the stockholders who paid their assessment. This would afford very little consolation to the stockholder after the money collected from him had been paid over in satisfaction of the debt for which the stockholder is not in law and conscience bound. On the other hand, the receiver (so says the Supreme Court) 'represents both the creditors and the association.' *Kennedy* v. *Gibson*, 8 Wall., 506; 19 L. Ed., 476. And therefore the judgment against him in this action would conclude him both as to the receiver and the creditor. *Cromwell* v. *Sac. Co.*, 94 U. S., 351; 24 L. Ed., 195. It seems to me that, to sustain the contention of plaintiff, the court must read into the statute not only that Congress intended that the comptroller should be the exclusive judge as to when an assessment on the shareholders should be made, and the amount thereof, but that he is also so far clothed with judicial functions as to conclude the shareholder from contesting the fact as to the validity or existence of any liability which the property of the shareholder is taxed to pay. This would carry the representative character of the receiver beyond what the Supreme Court has said,—that he represents the creditors and the association,—by holding that he also represents the shareholders, when called upon to pay the assessment. It seems to me that this would overturn the maxim that every man is entitled to his day in court, and would violate the fifth amendment to the Federal Constitution, in depriving the shareholder of property 'without due process of law.' While the phrase 'due process of law,' as applied in this country, is more or less controlled by its application to the facts and conditions of the particular case, yet in its universality it implies the right of the person to be affected by a judicial proceeding against him 'to be present before the tribunal which pronounces judg-

ment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting by proof every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.' *Holden* v. *Hardy*, 169 U. S., 366."

The question which we are now discussing was not passed upon in the majority opinion of the Court of Appeals. They held that in the view taken by them of the case it was not necessary to "cast even a curious glance" at the proposition. (Rec., 296.) The matter, however, was discussed by Judge Grosscup in his dissenting opinion. (Rec., 303.) He recognized apparently that it is indefensible to hold a shareholder for debts incurred after a *bona fide* transfer of his stock. He held, however, that the measure of liability should be not a *pro rata* share of debts existing at the time of the transfer, but a *pro rata* share of the difference between the bank's liabilities and its assets at the time of the transfer. In regard to this contention, it is evident that it is practically impossible of application. While it is easy to determine a bank's liabilities upon a given date, to determine some years later what its assets were upon the same date is a matter of extreme difficulty. It would involve in each case a full accounting and a full showing as to the financial responsibility of each debtor of the bank; a matter which would afford ground for much speculation, but upon which little exact and satisfactory information could be obtained.

Judge Grosscup's theory was based on the proposition that the creditor who deposited his money in the bank the day after Dewey sold his stock is equally in-

terested in his liability to pay debts, because he has the right to rely upon the fact that in the hour of Dewey's withdrawal as a stockholder, the assets were more than equal to the liabilities, or in case of a deficit that the stockholders would be subject to call to make up such deficit.

This, of course, assumes the whole question in controversy. Has such a creditor the right to rely upon the liability of a former stockholder? Has he a right to rely upon any such stockholder making up a deficit except to creditors who had trusted the bank upon the faith of his being a stockholder? We submit that he has not, for the reasons given.

This brings us to a consideration of the debts and liabilities for the *pro rata* share of which Dewey's estate should be held.

The amount of these claims was agreed upon by stipulation in the Circuit Court. The stipulation is found upon page 258 of the record. These claims are set out in the decree of the court (Rec., 276), and amount to the sum of $11,930.21. Dewey's full *pro rata* share of these debts upon his 105 shares would be $2,505.30. If he were assessed only on the basis of $86 a share he would be chargeable with 14 per cent. less, or $2,254.56. The court found, however, that Dewey was not liable for certain of the claims included in the above amount. The finding of the court on this proposition is found on pp. 276, 277 and 278 of the record.

HARLAN COUNTY DEPOSIT.

The finding of the court on this transaction was as follows:

"The court finds as to the above claim of Harlan County, Nebraska, for $4,429.72, that at the time Dewey sold the stock in question there was on deposit in said bank in the name of E. G. Whitney, treasurer, $4,319.57. That afterwards, in May, 1896, the balance of this account then on hand was paid over in cash to said county treasurer's successor in office, D. A. McCullough, and by him redeposited in said bank. That this amount of $4,319.57 was added to and drawn from time to time, the deposit reaching at one time over $10,000, and at one time receding to $4,004.76. It is claimed by said successor D. A. McCullough that the bank required him to redeposit the money in said bank before paying him the money. There is, however, no evidence to show that Charles P. Dewey had any knowledge whatever of this transaction. The court finds that as to this item there was such an absolute novation as to release Dewey."

Pages 259, 260 and 262 of the record contain Mr. McCullough's testimony. It appears that the county money deposited in treasurer Whitney's name was not protected by any bond. In the meantime the bank had given a bond to Harlan County under McCullough's term, and the county authorities were anxious to have the money paid over by Whitney, who had deposited it without authority, and then have McCullough redeposit it, so that it would be deposited under the terms and protection of a depository bond authorized by a new law of the state. (See p. 261 of record, McCullough's testimony.) There was a complete novation for two reasons.

First: The account, after Dewey sold his stock, ran

up to $10,000; the money was deposited and checked out, and the debt that the bank owed the county when Dewey sold his stock could not, by any principle of law, be identified as the same debt that the bank owed the county when it closed its doors two years and five months thereafter.

Second: The debt of the bank to the county was afterwards paid over in cash to the new treasurer, and by him redeposited under different conditions and different security.

As said before, for two reasons we contend that the indebtedness existing when Dewey sold his stock was extinguished long before the failure of the bank.

This was an open account, subject to check. New deposits were constantly being made, and new checks constantly drawn upon the same. When Dewey sold his stock there was $4,275.32 on deposit. Subsequent deposits swelled the deposit to $10,318.43 about ten months later, notwithstanding the amounts that were checked out in the meantime. When the bank failed the deposit was reduced to $4,004.67, the same being $6,313.76 less than in November, 1895. Under rules of law too familiar to require the citation of authorities, the debt oldest in point of time was first paid by the checks first drawn. If no checks had been drawn against the deposit prior to November, 1896, when the deposit reached $10,318.43 and had the original deposit been part of that amount, still the checks for the $6,313.76, paid therefrom, would first have drawn out and paid the $4,275.32 on deposit when Dewey sold his stock. Can a court indulge in the conclusion that of the $10,318.43 on deposit in November, 1896, only that

money was withdrawn which was deposited after Dewey sold his stock? And that the money on deposit when he sold his stock remained intact, undisturbed by all the depositing and checking out that was going on for about two years and a half, and which reduced that $10,318.43 to $4,004.67?

Then again the old Whitney deposit was actually raised by Burton and paid to Whitney, and by Whitney paid over to McCullough, the new treasurer, in formal and official extinguishment of the debt as far as treasurer Whitney was concerned, and this took place more than a year after Dewey sold his stock; this transaction released C. P. Dewey from all liability as former stockholder. It is true that the bank was as much indebted afterwards, as it was before this transaction, but the character of the debt had changed. By advice and instructions of the county board, treasurer McCullough had received the cash from Whitney and from the bank, and then redeposited the money under a new bond which the board had approved and regarded as good. The moment that money was paid over to McCullough, the new treasurer, the old debt was extinguished, and so was the liability of all persons connected with it. When the money was redeposited with the bank there was created a new liability, a new debt binding the bank, and all who were connected with it at the time, especially the persons who were on the new bond. For the two reasons given, we claim that Dewey was released from all liability for the Harlan County deposit.

The Circuit Court also held that Dewey was not liable for the claim of A. B. Dewey, amounting to $2,942.16. The finding of the court as to this claim was as follows:

"As to the above claim of A. B. Dewey on certain certificates of deposit amounting to $2,942.16 the court finds that said A. B. Dewey was a stockholder in said bank for an equal amount with said C. P. Dewey during the period that C. P. Dewey was a stockholder. That said A. B. Dewey was a director of said bank from January, 1892, to January, 1895; that after C. P. Dewey had sold his stock, said A. B. Dewey took from said bank certain assets of the bank as collateral security for said certificates of deposit held by him and on which certificates this claim is made; that no accounting has been made or shown in this case as to said assets so taken as collateral security to said certificates; that the receiver, complainant herein, has compromised with said A. B. Dewey as to his stockholder's liability in the matter of said bank. The court finds as to this claim that the said Charles P. Dewey is not liable."

This finding is amply sustained by the evidence in the record. (Randall, p. 65; M. F. Burton, p. 138; A. B. Dewey, p. 161.)

The court also excluded from the claims for which Dewey was held liable his own claim of $2,590.66, on the ground that there was no reason to collect from Dewey to pay his own claim. (Rec., 278.)

In the case of *Wick National Bank* v. *Union National Bank*, 62 Ohio State, 446, it was expressly held that an assessment collected from stockholders who were held liable to pay certain specific debts incurred while they were stockholders should be divided *pro rata* among such debts. Under this decision Dewey would have been entitled to have paid on his claim a *pro rata* share of the amount collected from himself. In view of this fact the court's ruling that it would not collect from Dewey to pay his own claim was clearly right.

This left claims existing at the time Dewey sold his stock and which were unpaid at the date when the re-

ceiver was appointed, amounting to $1,967.67, with interest from September 14, 1897, the date of the comptroller's assessment.

We respectfully submit that if Dewey's estate is held liable at all its liability should be limited to a *pro rata* share of this amount in accordance with the original decree of the Circuit Court.

V.

THE SALE OF THE TWENTY-FIVE SHARES NOT TRANSFERRED ON THE BOOKS OF THE BANK SHOULD HAVE BEEN SUSTAINED BY THE COURT OF APPEALS.

The Court of Appeals directed a decree against Dewey's estate for the full assessment on twenty-five shares. From this portion of the judgment of the court Dewey's executors have prayed a cross-appeal, and have assigned cross-errors in this court.

The evidence shows that this stock was delivered to the purchasers, with a power of attorney attached properly executed. At the time Dewey resided in Chicago and the stock was transferable on the books of the company in Nebraska. It would not be reasonable to require Dewey to go to the bank personally and see that the stock was transferred on the books. He gave the purchaser a power of attorney and subsequently wrote to the bank stating that he had sold all of his stock. (Rec., 49.)

Upon the authority of *Whitney* v. *Butler*, 118 U. S., 655, and *Earle* v. *Coyle*, 95 Fed. Rep., 99, we contend that Dewey did all that was reasonably necessary under the circumstances to give notice of the transfer of the

stock, and that he should be relieved from liability thereon.

In any event he should not be held liable on these shares for more than his *pro rata* share of the debts existing at the time of the transfer and remaining unpaid when the bank failed. After he made the transfer he ceased to be the owner of the stock. It is true that the stock still stood on the books in the name of Jewett, but as between Dewey and the purchaser, Jewett was no longer Dewey's agent, but the agent of the purchaser. Persons dealing with the bank after the date of the transfer would not have found Dewey's name on the list of stockholders. They would not have been misled into believing that he was a stockholder. The fact that stock stood in the name of Jewett would simply have put them on inquiry as to whom he represented. Inasmuch as the bank and its officers were informed that he no longer represented Dewey inquiry at the bank would have disclosed to any person seeking knowledge that Dewey no longer had an interest in the stock.

While creditors who had dealt with the bank while Jewett represented Dewey as his agent might have been entitled to have the stock transferred of record, creditors dealing with the bank after the actual transfer of title could not have been misled into believing that Dewey was the owner of stock by finding stock on the record in the name of Jewett.

For this reason it is only creditors who dealt with the bank prior to the sale of the twenty-five shares in question who can claim any rights by reason of the fact that the stock was not transferred of record.

Before concluding the argument we again call the attention of the court to the fact that in the Circuit Court the appellant took a decree for the entire amount of his claim against the transferrees of Dewey. (Rec., 274.) This action was inconsistent with the theory of appellant's bill. The bill alleged that the transfers by Dewey were void and the prayer of the bill was that they should be set aside "and the title to said stock be vested, both in fact as well as on the books of the bank in the name of the said Charles P. Dewey." (Rec., 238.)

We contend that by taking a decree against the transferrees the receiver has elected to ratify the sales made by Dewey and that this election amounted to an abandonment of his claim against the vendor of the stock.

In the case of *Morrill* v. *Crawford*, 51 Neb., 287, this question was presented for decision. In that case the prayer of the bill was in the alternative, that the transfer be set aside or that the receiver have a decree against the purchaser. The Supreme Court of Nebraska held that by taking a decree against the purchaser the receiver had made an election which was binding upon him, and that he could not also take a decree against the vendor.

In conclusion we respectfully submit that upon the record in this case the appellees are entitled

First: To have the judgment of the Court of Appeals as to eighty shares of stock affirmed.

Second: On the cross-appeal to have the judgment of said court as to twenty-five shares reversed and to have a decree relieving the executors from liability.

Third: If the executors are held liable, to have the

amount of their liability limited to a *pro rata* share of the debts existing at the time of the sale, and which remained unpaid when the receiver was appointed. Their *pro rata* share should not exceed one hundred five five-hundredths of the amount of such debts.

WILLIAM B. MCILVAINE,
Solicitor for Appellees.

JOHN P. WILSON,
NATHAN G. MOORE,
Of Counsel.

Supreme Court of the United States.

Nos. 220 and 530.—October Term, 1905.

John W. McDonald, Receiver, &c., Appellant, vs. Chauncey Dewey et al., Executors. (220)	Appeal and cross appeal from the Circuit Court of Appeals for the Seventh Circuit.
Chauncey Dewey et al., Executors, Appellants, vs. John W. McDonald, Receiver, et al. (530)	

[May 28, 1906.]

The first of these cases was an appeal from a decree of the Circuit Court of Appeals, rendered in a case wherein John W. McDonald, receiver of the First National Bank of Orleans, Nebraska, was complainant, and Charles P. Dewey and others were defendants, reversing a decree of the Circuit Court for the Northern District of Illinois, and remanding the case to that Court with directions to enter a decree against Dewey for his full assessment on twenty-five shares of stock of the First National Bank, and for interest thereon.

The second case is a cross appeal by Chauncey Dewey and his co-executor from the same decree.

Charles P. Dewey having died pending the litigation, the suits were revived in the name of Chauncey Dewey and Charles T. Killen, executors of his will.

The original was a bill in equity to enforce an assessment of $86 a share on 105 shares of stock of the First National Bank of Orleans, Neb., which failed on May 20, 1897. These shares, having been originally owned by Charles P. Dewey, were sold by him in December, 1894, and in January, 1895. Eighty shares were duly transferred on the books of the bank within a few weeks after the sale. The remaining twenty-five shares had been previously transferred by Dewey to his agent, Frederick L. Jewett, who was admitted to be irresponsible, and stood on the books of the bank in the name of Jewett, when the bank went into the hands of a receiver, on May 20, 1897, although they had been sold by Dewey. The bill alleged that Hedlund, the original receiver, (since superseded by McDonald, the present receiver,) was appointed and took possession on June 5, 1897, a fortnight after the failure of the bank; that on September 14, 1897, the Comptroller levied an assessment of $86 a share upon the capital stock; that on May 8, 1894, Charles P. Dewey was the owner of 105 shares of

stock, and was registered as such; that the bank was then, and continuously remained, insolvent; that this insolvency was known to Dewey, who on that day, May 8, assigned 95 of these shares to the defendant Jewett, who was wholly irresponsible; that the transfer was colorable only, and made for the sole purpose of evading Dewey's liability as a stockholder; that Jewett thereafter, at various times, transferred 80 of the 95 shares to the several other defendants, and that on January 3, 1895, Dewey transferred his remaining 10 shares to Jewett, so that at the time the bank failed said 105 shares were registered on the books of the bank in the names of the several transferees; that the several transfers were made at a time when the bank was insolvent, and known by Dewey to be so, for the purpose of evading his liability for assessments, and to irresponsible persons.

The answer of Dewey contained a general denial of all material allegations, and set up that the transfers were outright and for the par value of the stock; that he had sold all his stock, and with the exception of the 25 shares, all transfers had been made on the books of the bank prior to its suspension.

The Circuit Court found that the sales of stock were all made through Jewett, who acted merely as the agent of Dewey and had no interest in the stock, but held it for Dewey in his name; that the bank failed about two years and five months after the sale by Dewey; that the bank was insolvent in December, 1894, and January, 1895, at the time Dewey sold the hundred and five shares, and that Dewey, who was Vice President of the bank from 1892 to 1895, knew, or ought to have known, that fact; that three certificates, aggregating twenty-five shares, were not transferred on the books of the bank and still stood in the name of Jewett when the bank suspended; that the claims of the creditors of the bank, who were such when Dewey sold his stock and remained such at the time of the failure, aggregated $11,839.15, of which, however, only $2,787.97 remained unsatisfied, and that of this the ratable share of Dewey was $585.48, for which sum a decree was rendered.

On appeal by the receiver to the Circuit Court of Appeals the decree of the Circuit Court was reversed and a new decree directed to be entered for the full amount of the assessment on the twenty-five shares standing in the name of Jewett at the time of the failure; that as to the eighty shares there could be no recovery, although the bank was insolvent at the time of the sale of the stock, and was known to be insolvent, and the transfer was made for the purpose of evading liability; but that there could be no recovery without proof of the additional fact that the several transferees were likewise insolvent; that as to the twenty-five shares Dewey remained liable, as he had not surrendered the certificate to the bank or given the officers such data as to enable them to make such transfer on its books.

The case was remanded to the Circuit Court, with directions to render a decree against Dewey for his full assessment on twenty-five shares. From this decree both parties appealed to this Court.

Mr. Justice Brown delivered the opinion of the Court.

Three sections of the National Bank Act, which are printed in the margin,* are pertinent in connection with the leading questions involved in this case.

That the transfer of stock in corporations, even when in failing circumstances, should not be unduly impeded, is essential not only to the prosperity of such corporations and the value of their stock, but to the interest of stockholders who may desire for legitimate reasons to change their investments or to raise money for debts incurred outside the business of such corporation. (*Bank* v. *Lanier*, 11 Wall. 369, 377.) At the same time the frequency with which such transfers are made for the purpose of evading the double liability imposed by the National Banking Act, has given rise to a large amount of litigation turning upon their legality. In this connection certain propositions have been laid down by so many Courts and in so many cases that they may be regarded as fundamental principles of law applicable to all cases of this character.

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*Sec. 5139. The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired.

(The shares of this Nebraska bank were transferable only on the books of the bank, in person or by attorney, on surrender of the certificate that represented the shares proposed to be transferred.)

Sec. 5210. The president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, on the first Monday of July of each year, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency.

Sec. 5151. The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; . . .

(1) That a party, who by way of pledge or collateral security for a loan of money, accepts stock of a national bank and puts his name on the registry as owner, incurs an immediate liability as a stockholder, and cannot relieve himself therefrom by making a colorable transfer of his stock to another person for his own benefit, as was done by the sale to Jewett in this case. (*National Bank* v. *Case*, 99 U. S. 628; *Marcy* v. *Clark*, 17 Mass. 329; *Nathan* v. *Whitlock*, 9 Paige, 152; Cook on Stockholders, Sec. 263.)

(2) The same result follows if the stockholder, knowing, or having good reason to know, the insolvency of the bank, colludes with an irresponsible person with design to substitute the latter in his place, and thus escape individual liability, and transfers his stock to such person. It is immaterial in such case that he may be able to show a full or partial consideration for the transfer as between himself and the transferee. (*Bowden* v. *Johnson*, 107 U. S. 251.)

Upon the other hand, in *Whitney* v. *Butler*, (118 U. S. 655,) certain stockholders employed an auctioneer to sell their shares at public auction. They were bidden in by a purchaser who paid the auctioneer for them and received from him the certificate of stock with a power of attorney to transfer the same in blank. The auctioneer paid the money to the original owner of stock, but no formal transfer was made on the books of the bank. Shortly afterwards the bank became insolvent and went into the hands of a receiver, who made an assessment upon the original stockholders. We held that the responsibility of the stockholders ceased upon the surrender of the certificate to the bank, and the delivery to its president of a power of attorney to transfer the stock on the books of the bank. The controlling considerations were the good faith of the stockholders in making the sale, believing the bank to be solvent, and the fact that they had done all that they could reasonably be expected to do to make a valid sale of the stock and a transfer of the certificate on the stock register.

Under the English law a shareholder may transfer his shares to an irresponsible party for a nominal consideration, though the sole purpose of the transfer be to escape liability, provided the transfer be out and out, and not merely colorable or collusive, with a secret trust attached. Under such circumstances the person making the transfer is released from liability, both as to corporate creditors and the other shareholders. (Cook on Stockholders, Sec. 266; 2 Morowetz on Private Corporations, Sec. 859.)

The law is quite different in this country. At the same time the original stockholder cannot be held liable, unless the bank were practically insolvent at the time the transfer was made, and its condition was known or ought to have been known to the stockholder making the transfer. If the bank were in fact solvent and able to pay its debts as they matured when the transfer was made, the creditors having ample security in the solvency

of the bank, have no special interest in knowing who the stockholders are, since their only recourse to them would be in the remote contingency of the insolvency of the bank. The transferer can only be held liable if the bank be insolvent, and such insolvency be known, or ought to have been known, to him from his relations to the bank, since the transfer is *prima facie* valid, and shifts to the transferee the burden of the responsibility, which can be laid upon the original stockholder only in case of bad faith, or evidence of a purpose to evade liability.

This bad faith may be shown by the fact that the bank was known to him to be insolvent; but notwithstanding this the transfer would be valid if made to a person of known financial responsibility, since the creditors could not suffer by the substitution of one solvent stockholder in place of another. The Court of Appeals, however, went further and held that the transfer would be valid unless made to an irresponsible person unable to respond to an assessment, whose financial condition was known, or ought to have been known, to him.

There is no such limitation intimated in the case of *Pauly* v. *State Loan & Trust Co.*, (165 U. S. 606,) which involved a question as to the liability of a pledgee, but in which certain rules were stated (p. 619) as to the liability of shareholders, one of which was "that if the real owner of the shares transfers them to another person, or causes them to be placed on the books of the association in the name of another person, with the intent simply to evade the responsibility imposed by section 5151 on shareholders of national banking associations, such owner may be treated, for the purposes of that section, as a shareholder and liable as therein prescribed." The case, however, is not directly in point.

The most pertinent in this connection is that of *Stuart* v. *Hayden*, (169 U. S. 1.) In that case, Stuart being an owner of one hundred shares of stock in a national bank, a director of the bank, and a member of its finance committee, purchased certain real property of Gruetter and Joers, and as a consideration assumed a mortgage debt, turned over his stock in the bank as of the value of $18,000, delivered to them the certificate of the shares and paid the balance of the agreed price in cash.

These certificates of stock were returned to the bank and new certificates issued to Gruetter and Joers, to whom Stuart represented that the bank was in a solvent and prosperous condition. The Circuit Court found that such representation was false to the knowledge of Stuart, and made for the purpose of inducing them to purchase the stock, and of evading and escaping his liability as a shareholder for his assessment thereon. Upon this state of facts Stuart was held liable to the receiver as the holder and owner of these shares.

The principal inquiry was whether Stuart transferred his stock to escape the liability imposed by the statute, his contention being that, if the trans-

fer were absolute and to persons who were at the time solvent and able to respond to an assessment upon the shares, the motive with which the transfer was made was of no consequence.

In answer to this it was said by Mr. Justice Harlan:

"There is no case in which this court has held that the intent with which the shareholder got rid of his stock was of no consequence; certainly, no case in which the intent was held to be immaterial, when coupled with knowledge or reasonable belief upon the part of the transferrer that the bank was insolvent or in a failing condition.

* * * * * *

"One who holds such shares—the bank being at the time insolvent—cannot escape the individual liability imposed by the statute by transferring his stock with intent simply to avoid that liability, knowing or having reason to believe, at the time of the transfer on the books of the bank that it is insolvent or about to fail. A transfer with such intent and under such circumstances is a fraud upon the creditors of the bank, and may be treated by the receiver as inoperative between the transferrer and himself, and the former held liable as a shareholder without reference to the financial condition of the transferee."

The Court found upon the facts "that Stuart, with knowledge of the insolvency of the bank, or at all events with such knowledge of the facts as reasonably justified the belief that insolvency existed or was impending, sold and transferred his stock with the intent to escape individual liability, . . . and the bank having been in fact insolvent at the time of the transfer of his stock—which fact is not disputed—he remained, notwithstanding such transfer, and as between the receiver and himself, a shareholder, subject to the individual liability imposed by section 5151." Although it was alleged in the bill by the receiver that Gruetter and Joers were at the time of the transfer pecuniarily irresponsible, there was no finding to that effect, and in treating of the liability of Stuart no stress was laid upon their financial condition, but the case was disposed of as one of bad faith on Stuart's part in transferring the shares at a time when he knew the bank to be insolvent. There is certainly nothing in this case to justify the inference that the receiver was bound in making out his case to establish the fact that the transferee was insolvent, and was known to the stockholder to be so when he transferred his stock.

In *Matteson* v. *Dent*, (176 U. S. 521,) the stockholder, while the stock was yet owned by him and stood registered in his name, died intestate, and the stock was distributed to the widow and heirs by decree of the Probate Court. Shortly thereafter the bank became insolvent and the receiver brought suit against the widow and children for an assessment. The defendants were held to be liable upon the ground that the obligation of a subscriber of stock is contractual in its nature, and is not extinguished by death, but, like any other contract obligation, survives and is enforcible against the estate of the stockholder, notwithstanding that the estate of the dece-

dent had been settled and fully administered according to law, and that the insolvency of the bank occurred after the death of the intestate, citing *Richmond* v. *Irons*, (121 U. S. 27.) It is true that the case did not involve the question here presented, but in delivering the opinion the prior cases of *National Bank* v. *Case*, (99 U. S. 627,) and *Bowden* v. *Johnson*, (107 U. S. 251,) were cited in support of the proposition, treated as elementary, that "where a transfer has been fraudulently or collusively made to avoid an obligation to pay assessments, such transfer will be disregarded, and the real owner be held liable." (p. 531.)

Much stress is laid, in the opinion of the Court of Appeals, upon the case of *Earle* v. *Carson*, (188 U. S. 42,) supposed to lend countenance to the doctrine that the receiver is bound, as part of his case, to establish the fact that the transferee was insolvent and known to the transferrer to be so at the time of the transfer. The defense was that, prior to the suspension of the bank, the defendant had in good faith sold the stock standing in her name for the full market price, which had been paid her; that she had delivered up to the bank her stock certificate, with a power of attorney to make the transfer, and requested that the stock be transferred; that the officer of the bank said the transfer would be made, but it seems that the officer had failed to discharge that duty; that as the defendant had done everything which the law required her to do to secure the transfer, she had ceased to be a stockholder and was not responsible. It was alleged as error that the trial court refused to instruct the jury that the sale of the stock, though lawful in every other respect, could not be so treated if it were found that at the time of the sale the reserve of the bank were, to the knowledge of the defendant, below the limit fixed by law. (p. 44.) This refusal was held not to be error. "Certainly," said Mr. Justice White in the opinion, (p. 46,) "it cannot in reason be said that the power would exist to sell stock like any other personal property, if, before the power could be exercised, the seller must examine the affairs of the bank, marshal its assets and liabilities, in order to form an accurate judgment as to the precise condition of the bank."

In discussing the question in regard to the validity of the transfer, it was said (p. 49) that "the exercise of the power to transfer stock in a national bank is controlled by the rules of good faith applicable to other contracts. The qualification just stated gives no support to the proposition that where a sale of stock in a national bank is made in good faith, nevertheless the consequences of the sale are avoided if subsequently it developed that the bank was insolvent at the time of the transfer, in the sense that its assets were then unequal to the discharge of its liabilities, when such fact was unknown to the seller of the stock at the time of the sale."

The argument was made (p. 54) that as the "person to whom the stock was sold was insolvent, and hence unable to respond to the double liability, the sale was void, although the fact of such insolvency of the buyer was unknown to the seller." This was held to be unsound, "since it but insists that the validity of the sale of the stock is to be tested, not by the bad faith of the seller, but upon the unknown financial condition of the buyer." We find nothing in this case which impugns in any degree the authority of the prior cases, or holds that the validity of the sale is to be gauged by the financial condition of the transferee, or the knowledge of that condition by the transferrer.

1. We think it a proper deduction from the prior cases, and such we hold to be the law, that the gist of the liability is the fraud implied in selling, with notice of the insolvency of the bank and with intent to evade the double liability imposed upon the stockholder by the National Banking Act. In short, the question of liability is largely determinable by the presence or absence of an intent to evade liability. The fact that the sale was made to an insolvent buyer is doubtless additional evidence of the original fraudulent intent, but would not be in itself sufficient to constitute fraud without notice of the insolvency of the bank. The stockholder is not deprived of his right to sell his stock by the fact that the sale is made to an insolvent person, unless it be made with knowledge of the insolvency of the bank. This was practically the ruling in *Earle* v. *Carson*, in which we held that a *bona fide* sale would not be void, though the vendee were insolvent, if the fact of such insolvency were at the time unknown to the seller. The case of *Earle* v. *Carson*, so far from lending countenance to the argument of the appellees, bears strongly in the opposite direction.

The solvency of the vendee, however, is pertinent in showing that no damage could have resulted to the creditors of the bank by the transfer. Though not a necessary part of the plaintiff's case, it may be a complete defense, if it be shown that the sale, however fraudulent, was made to a vendee who was as able to respond to the double liability as was the vendor. The proposition that the executors are not responsible because the sales were made to solvent vendees, being defensive in its character, the burden of proof was upon the m. In this particular the case is not unlike that of an ordinary action upon a contract, where the plaintiff relies upon the contract and the breach, and sues for such damages as may be reasonably supposed to follow therefrom. But it may be shown in defense that no damages really resulted, as, for instance, in an action for services, that plaintiff might have obtained other employment at the same wages, or, in an action for a failure to deliver goods, that plaintiff might have gone into the market and purchased other goods at the same price at which the defendant had agreed to sell them. In such case defendant

assumes the burden of proving that no damage in fact resulted. The argument in this case really is that the receiver was bound to show, not only that Dewey was guilty of fraud, but that damages necessarily resulted and that he knew that fact. The reply is that the fraud was consummated by the sale of the stock of a bank known to be insolvent, with intent to evade liability, and that the fraud is not less though the transferees happened to be solvent, but that their solvency may be proved to rebut the presumption that injury resulted to the creditors from the transfers.

While there is no express finding of the Court of Appeals (though there was in the Circuit Court) that Dewey knew, or should have known, of the insolvency of the bank at the time of the transfer, and that the transfer was made with the intent to evade his double liability as stockholder, the decree of both courts is based upon this assumption; and as stated in the dissenting opinion "that the final suspension of the bank, though it occurred two years and five months after Dewey's transfer of stock, is traceable, in the line of cause and effect, to the insolvency of the bank at the time of the transfer." We do not understand these facts to be seriously disputed.

In this connection it only remains to consider whether the transferees were financially responsible to the amount of the assessment. It is not necessary to show that they were persons of a responsibility equal to that of the original stockholder. It is sufficient that they were responsible to the amount called for by the necessities of the case—in other words, in an amount sufficient to indicate that the creditors of the bank were not damnified by the change of ownership.

Although the evidence does not show affirmatively the insolvency of the ultimate transferees, it falls far short of showing that a decree against them for their assessment could be collected. Without going into details of the property of each one of the seven transferees, it is sufficient to say that they were either working on salaries, with no evidence of available property, outside of such salaries, or that their property consisted of incumbered real estate in Chicago of a largely speculative value; and that in some cases, at least, the shares were paid for in real estate conveyed for the purpose of getting rid of the property and avoiding the payment of interest on the incumbrances. There is no satisfactory evidence that a decree against any one of these parties for the amount of his assessment could have been collected by ordinary process of law.

2. But, except so far as the twenty-five shares held by Jewett as the agent of Dewey at the time of the failure, we think the executors should not be held liable to the creditors who became such after the transfer. The National Banking Act requires (R. S. Sec. 5210) a list of the names and residences of all the shareholders, and the number of shares held by

each to be kept in the banking house, subject to the inspection of all the shareholders and creditors of the association; and (Sec. 5139) that every person becoming a shareholder by a transfer of shares to himself shall succeed to all the rights and liabilities of the prior holder of such shares, and no change shall be made in the articles of association by which the rights, remedies or securities of the *existing creditors* of the association shall be impaired.

The object of this legislation is evidently to apprise persons dealing with the bank of the names of the shareholders, upon whom the double liability shall be imposed in case of the insolvency of the bank. In the event of such insolvency it is only existing creditors who can claim to have been damnified by a fraudulent transfer of shares. As to them such transfer is voidable. Subsequent creditors are apprised by the published list of the names of the shareholders, to whom transfers have been made, and of the persons to whom they may have recourse for the double liability. The injustice of holding a stockholder liable for an indefinite time in the future to creditors who may have become such years after he had parted with his stock, and who were apprised of the names of the stockholders by the published list, is too manifest to require an extended comment. We are only applying to this case by analogy the ordinary rule of the common law, that a voluntary deed by a person heavily indebted is fraudulent and void as to prior creditors merely upon the ground that he was so indebted, but as to subsequent creditors is only void upon evidence that the deed was made in contemplation of future indebtedness. (*Sexton* v. *Wheaton*, 8 Wheat. 229; *Schreyer* v. *Scott*, 134 U. S. 405; *Ridgeway* v. *Underwood*, 4 Wash. C. C. 129–137; *Bennett* v. *Bedford Bank*, 11 Mass. 421.)

This was the interpretation given to a similar statute by the Supreme Court of Ohio in *Peter* v. *Union Mfg. Co.*, (56 Ohio St. 181–204.) It is true that in Ohio a stockholder cannot escape liability to existing creditors by a transfer of his stock, however *bona fide* such transfer may be. But we do not see how that affects the ruling in the Peter case, that he does not continue liable as to future creditors.

The case of *Bowden* v. *Johnson*, (107 U. S. 251,) turned upon the question of the fraud in a certain transfer of stock, the conclusion being that such transfer was fraudulent, and that the original owner continued liable to the creditors of the bank. The question as to whether such liability was limited to existing creditors or extended to future creditors was not touched upon in the opinion of the Court, but as the insolvency of the bank seems to have occurred soon after the fraudulent transfer was made, it is improbable that any future creditors existed.

There are undoubtedly cases in which we have used the general expression that in the event of a fraudulent transfer of stock the stockholder remains liable to the creditors of the bank, but in none of them were we

called upon to discriminate between existing and subsequent creditors, since as a rule the insolvency of the bank followed soon after the transfer, and the distinction was not called to our attention by counsel.

It results that there must be a decree affirming the decree of the Circuit Court of Appeals so far as it holds Dewey liable for his full assessment on the twenty-five shares standing in Jewett's name, and reversing it so far as it exonerated his estate from assessment upon the remaining shares, to such amount as is necessary to satisfy the creditors existing at the time the transfer of the stock was made, and that the cause be remanded to the Circuit Court for the Northern District of Illinois for further proceedings consistent with this opinion.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

Nos. 220 and 530.—October Term, 1905.

John W. McDonald, Receiver, &c., Appellant, vs. Chauncey Dewey et al., Executors. (220)	Appeal and cross appeal from the Circuit Court of Appeals for the Seventh Circuit.
Chauncey Dewey et al., Executors, Appellants, vs. John W. McDonald, Receiver, et al. (530)	

[May 28, 1906.]

Mr. Justice White, with whom concur Mr. Justice McKenna and Mr. Justice Day, dissenting.

To make clear the reasons for my dissent I briefly recapitulate the facts, the issues and the matters decided.

As a result of the failure in May, 1897, of the First National Bank of Orleans, Nebraska, the Comptroller appointed a receiver and subsequently levied an assessment of $86 a share to make good a deficiency of assets required to enable the payment of the creditors of the bank existing at the date of the failure.

In May, 1894, Dewey was the registered owner of 105 shares of the stock of the bank. In that month and year he assigned 95 of these shares to Jewett and they were transferred on the stock register in the name of Jewett. Jewett then transferred on the stock register 80 of these shares to six other persons, Jewett thus remaining the registered holder of but 15 out of the 95 shares transferred to him by Dewey. Subsequently Dewey transferred on the stock register the remaining 10 of the original 105 shares to Jewett. At the time, therefore, of the failure of the bank the 105 shares originally owned by Dewey had been put out of his name and stood on the stock register of the bank as follows: 25 shares in the name of Jewett and 80 shares in various proportions in the names of the six persons to whom Jewett had transferred them.

The object of the bill is to hold Dewey liable on the 105 shares for the assessment levied by the Comptroller. Questions of fact and of law are involved. The first are, At the time of the failure of the bank did the 105 shares of stock stand in the name of the agent of Dewey, or if not, did they stand in the name of irresponsible persons to whom Dewey, with the knowledge of the insolvency of the bank and to escape liability, transferred the stock? And the question of law is, If the stock was still

Dewey's, or if it was transferred by him, as stated, is he liable for the assessment or for any part thereof?

The court now determines both questions of fact against Dewey. In other words, the court holds that Dewey was the owner of the 25 shares standing in the name of Jewett, because Jewett received the transfer merely as the agent of Dewey and never became the owner of the stock. As to the 80 shares standing in the names of the six persons to whom Jewett transferred them, the court holds that they were transferred by Dewey to his agent Jewett with knowledge of the insolvency and to avoid the statutory liability, and to carry out this purpose were transferred by Jewett as his (Dewey's) agent, into the names of six irresponsible persons. The questions of fact being thus decided against Dewey, the proposition of law is in substance decided in his favor. I say this because it is now held that Dewey is not liable, except as to the 25 shares, for the assessment of $86 a share to pay the debts of the bank existing at the time of the failure, but only for such proportion of such assessment as may be required to pay such unsatisfied debts of the bank, if any there be, which were in existence at the several dates when the transfers of the 80 shares were made by Jewett as the agent of Dewey.

My dissent is constrained by a deep conviction of the unsoundness of the proposition now upheld exempting Dewey from liability, in respect to the 80 shares, for the call made by the Comptroller to pay the debts of the bank existing at the time of the failure, and the decision that he is only liable for such sum as may be necessary to pay the unsatisfied debts, if any, which existed when the fraudulent transfer of the stock was made.

As it is given to me to see it, this ruling is both novel and dangerous and without the support of any administrative or judicial construction applied to the statute, since it was originally enacted, more than forty years ago. To me it moreover seems that the ruling is repugnant both to the text and spirit of the statute, considered as an original question, and is besides contrary to a line of adjudications of this and other Federal courts. My endeavor shall be briefly to state the reasons by which I am led to this conclusion.

It cannot be denied that from the date of the original enactment of the national banking act in 1863 to the present time the Comptroller of the Currency, in making an assessment under the law to pay the debts of a failed national bank, has always made such call upon the assumption that the stockholders who were liable for assessment were so liable ratably for the amount required to pay the debts of the bank existing at the time of the failure. Such also is the case viewed from the standpoint of judicial decisions, for, although in numerous cases in this court and many cases in the lower Federal courts for years and years, questions in every aspect have been considered concerning the liability of a stockholder in a national bank

who, it was alleged, had transferred his stock in fraud of the statute, no case can be found where even a suggestion was made by counsel or by the courts of the existence of the rule of limited liability which the court now upholds. In saying this I do not overlook the fact that the court in its opinion refers to an Ohio case *Peter* v. *Union Mfg. Co.*, (56 Ohio St. 181,) as sustaining the doctrine which is now announced. That case, however, did not concern a national bank, but related to an Ohio corporation, and, as I shall hereafter endeavor to demonstrate, rested solely upon the provisions of the Constitution and laws of the State of Ohio, which were not only peculiar to that State, but were directly in conflict with the principle of liability expressed in the acts of Congress concerning the responsibility of stockholders in national banks.

Whilst of course the absence during such a long period of time, in administrative execution and judicial exposition, of even a suggestion that the limitation of liability now sustained was warranted by the statute is not conclusive, it certainly is persuasive that if such a limitation can be evolved from the law it must be occult and strained, since it has been latent and undiscovered for forty years. But a consideration of the statute it seems to me will at once make clear the fact that the limitation now sanctioned has never before been intimated, because that limitation must have been considered to be repugnant to the text of the statute.

Both by the national banking act as originally adopted in 1863 and as re-enacted in 1864, and as now embodied in section 5319 of the Revised Statutes, owners of stock in national banks were empowered to transfer that stock as personal property. The purpose of Congress to render this transfer effectual is evidenced by the omission in the re-enactment in 1864 of a provision found in the act of 1863, which might have had the effect of limiting transfers. (*Earle* v. *Carson*, 188 U. S. 42, 46.) And, following the plain text of the act, it has not been questioned that creditors existing at the time a stockholder made and completed a lawful transfer of his stock had no right to complain or hold the outgoing stockholder for existing debts of the bank, since by the statute the result of such a transfer was to sever all connection between such stockholder and the bank, wholly without reference to the consent of the then existing creditors, and to substitute the person to whom the valid and completed transfer had been made. Now, whilst it is true that the statute requires a registry of stockholders to be kept and transfers to be noted thereon, in view of the unlimited right of a stockholder to make a lawful transfer without the consent of the creditors existing at the time of the transfer, it cannot be said that the statute gave to the creditors a right to prevent transfers or presupposed that they would contract with the bank upon the faith of a particular state of the registry, when by the statute that registry could be changed by lawful transfers without the power of the creditor to complain. It is true also that the statute declares (Rev. Stat. sec. 5139) that when a lawful transfer is made

the shareholder "shall succeed to all the rights and liabilities of the prior holder of such shares." But this does not imply that existing creditors have a contract right against the transferring stockholder, since the right of such stockholder to make a lawful transfer and substitute another for himself without the consent of the creditors is an affirmance instead of a negation of the absence of the contract relation between the transferring stockholder and then existing creditors. And this is emphasized, since the new stockholder becomes ratably liable not only for debts contracted after the transfer made to him but for all the prior unsatisfied debts. Of course by the statute as originally enacted and as now existing, (Rev. Stat sec. 5151,) those who were stockholders in a national bank at the time of its failure are made equally and ratably liable to the amount of their stock for the debts of the bank then existing. But this provision does not destory or impair the right to make a lawful transfer before the failure of a bank, since it only attaches the double liability to those who have not made a lawful transfer and who are in contemplation of law stockholders at the time of the failure. Harmonizing these two sections of the statute, they import the purpose to secure the great advantage resulting from the untrammelled power to make a lawful transfer of stock as pointed out by this court in *Earle* v. *Carson*, *supra*, and *First National Bank* v. *Lanier*, (11 Wall. 377,) and yet at the same time when failure ensues to give the then existing creditors the benefit of the double liability of the then existing stockholders.

And when the repeated adjudications of this court are considered to me it seems that they expound the text and spirit of the statute as above pointed out, and, therefore, the rule now announced cannot be consistently upheld without overthrowing those decisions and substituting a new statute. In *National Bank* v. *Case*, 99 U. S. 628, (decided in 1878,) the principle controlling the question of the liability of a stockholder in a national bank who had made a fraudulent disposition of his stock was considered. On the one hand it was insisted that as the stockholder had a right to transfer his stock without the consent of then existing creditors of the bank, every "out and out" transfer, as it was termed, should be held to be efficacious to relieve from liability at the date of the failure. On the other hand it was contended that if a transfer was made with a knowledge of the insolvency of the bank and to escape the statutory liability, the stockholder remained a stockholder, and was, therefore, subject to the double liability. The latter contention was sustained. The court recognized the fact that in England, when a stockholder had a right to dispose of his stock at pleasure, the rule was that every out and out transfer which was not a mere sham severed the connection of the stockholder with the corporation, thus causing him to be no longer a stockholder and leaving him entirely free from liability. But the American rule was held to be different. Ex-

pounding that rule, it was declared that both in the case where a stockholder made a sham sale or transferred his stock to an irresponsible person, with knowledge of the insolvency of the bank, and for the purpose of escaping the statutory liability, the transferrer remained a stockholder for the purpose of the statutory double liability. In other words, the court declared that in both such cases the transfer, in legal intendment, at the election of creditors would be held to be a mere simulation, leaving the stockholder, despite such transfer, continuously subject to his statutory liability.

Without attempting to review all of the many other cases decided by this court involving controversies on this subject, it may not be doubted that the substantial doctrine of the case just reviewed has been reiterated time and time again and is the settled law of this court. Thus in *Bowden* v. *Johnson*, (107 U. S. 251.) Johnson was the holder of stock in a national bank. On February 14, 1874, his stock was transferred on the books of the bank in the name of a Mrs. Valentine. On May 26, 1874, more than three months after such transfer, the bank failed and the Comptroller made an assessment to pay the debts existing at the time of the failure, and the suit had for its object the enforcement of this assessment against Johnson. It was found that the transfer to Mrs. Valentine was not a sham, but that at the time it was made the bank was insolvent, that Johnson knew of the insolvency and transferred his stock to avoid liability and with the knowledge that Mrs. Valentine was irresponsible. Coming to consider the contention, under these facts, that Johnson could not be held for the debts existing at the time of the failure, the court expressly reiterated the ruling in the Case case, held that a shareholder who made a fraudulent tranfer of the kind under consideration continued liable as a stockholder, and the assessment which had been by the Comptroller for the debts existing at the time of the failure was adjudged to be valid, although such failure happened months after the fraudulent transfer. In the course of the opinion the court said (p. 261):

"But where the transferrer, possessed of information showing that there is good ground to apprehend the failure of the bank, colludes and combines, as in this case, with an irresponsible transferee, with the design of substituting the latter in his place, and of thus leaving no one with any ability to respond for the individual liability imposed by the statute, in respect of the shares of stock transferred, the transaction will be decreed to be a fraud on the creditors, and he will be held to the same liability to the creditors as before the transfer. He will be still regarded as a shareholder *quoad* the creditors, although he may be able to show that there was a full or a partial consideration for the transfer, as between him and the transferee.

"The appellees contend that the statute does not admit of such a rule, because it declares that every person becoming a shareholder by transfer succeeds to all the liabilities of the prior holder, and that, therefore, the liabilities of the prior holder, as a stockholder, are extinguished by the

transfer. But it was held by this court in *National Bank* v. *Case*, (99 U. S. 628,) that a transfer on the books of the bank is not in all cases enough to extinguish liability. The court, in that case, defined as one limit of the right to transfer, that the transfer must be out and out, or one really transferring the ownership as between the parties to it. But there is nothing in the statute excluding, as another limit, that the transfer must not be to a person known to be irresponsible, and collusively made with the intent of escaping liability, and defeating the rights given by statute to creditors. Mrs. Valentine might be liable as a shareholder succeeding to the liabilities of Johnson, because she has voluntarily assumed that position; but that is no reason why Johnson should not, at the election of creditors, still be treated as a shareholder, he having, to escape liability, perpetrated a fraud on the statute. This is the view enforced by the decision of the Chief Justice in *Davis* v. *Stevens*, (17 Blatchf. 259.)"

Again, in *Stuart* v. *Hayden*, (169 U. S. 1,) where it was found that a transfer of stock in a national bank had been made with knowledge on the part of the transferrer of the insolvency of the bank, and to escape the double liability, the court, after approvingly citing the previous cases, said (p. 14):

"And the bank having been, in fact, insolvent at the time of the transfer of the stock—which fact is not disputed—he (the transferrer) remained notwithstanding such transfer, as between the receiver and himself, a shareholder subject to the individual liability imposed by section 5151."

I need not stop to refer to the subsequent adjudications of this court which expressly reiterate the rulings just reviewed, since they are approvingly cited in the opinion of the court, and indeed are made the basis of the ruling. But to my mind it seems clear that the limited liability of Dewey which the court now applies to the eighty shares is repugnant to the previous decisions, and therefore the effect of citing approvingly the cases in question and yet deciding, as the court now does, is but at one and the same time to approve and disapprove the previous decisions. Let me briefly state why I think this conclusion inevitable. Certain it is that the previous cases expressly and unequivocally decided that a stockholder who in fraud of the liability as stated makes a transfer of his stock remains at the election of the creditors a stockholder to the same extent as if the transfer had not been made or as if it had been a mere sham. Can there be doubt of this in view of the language of the Case case announcing the American rule, of the express statement to that effect in the Bowden case, and the fact that in that case the liability, under the call of the Comptroller, was enforced for the debts existing months after the completed transfer and not merely for the unsatisfied debts existing at the time of the transfer? Is this not certain also in view of the declaration in *Stuart* v. *Hayden*, that because of the fraudulent transfer the stockholder continued to be liable under the statute? And mark, in the Hayden case, as if *ex industria* to exclude the conception that the fraud was only relative as to creditors

existing at the time of the fraudulent transfer, the court expressly declared that the liability of the transferring stockholder was to the receiver and according to the terms of the statute. And this, but in different form, reiterated the declaration made in the Bowden case, that the fraud was a fraud on the statute, and not, therefore, simply relative as to particular creditors existing at the time.

Besides to me it seems that the rule of limited liability now announced is self-destructive. What is the liability which the statute imposes? Is it a responsibility only to pay debts of the bank as they existed at the time a fraudulent transfer was made? Not so; for the only liability imposed by the statute on the stockholders is an obligation to respond to an equal and ratable assessment made by the Comptroller to pay the debts existing at the time of the failure. (Rev. Stat. secs. 5151, 5234.) From this it results that if a person is not a stockholder at the time of the failure he is liable for nothing, and if he is such stockholder he is liable for the statutory sum and no other. This plain result of the statute to my mind demonstrates the error of the conclusion as to limited liability now announced. For, if Dewey was not a stockholder at the time of the failure there is an entire absence of statutory authority to make any assessment whatever upon him, and if he was such stockholder then the statute fixed the measure of liability, and there is no power to substitute by judicial discretion a liability which the statute does not impose, and which on the contrary is excluded by its express terms. In other words, the statute imposes a uniform and ratable liability upon all stockholders who are liable at all and affords no justification for assessing one stockholder at one amount and another stockholder in another sum, upon the theory that the date of the contracting of debts and not the date of the failure is the test of liability.

And that this departure from the long received and judicially sanctioned construction of the statute will tend to destroy the security of the national banking system by rendering the double liability impossible of enforcement results from a few obvious considerations. Thus, under the rule now announced, one who owns or controls a majority of the stock of a national bank, knowing it to be insolvent, can transfer his stock to wholly irresponsible persons in order to avoid the statutory liability, and, by postponing the date of open failure until the existing debts of the bank have been extinguished by novation, leave the creditors existing at the time of the failure with substantially no stockholder to respond to the double liability. Indeed, this condition of things cannot be more cogently made manifest than by considering the facts in this case as found by the court. What are they? They are that Dewey was an officer of the bank and knew its hopelessly insolvent condition, and that he transferred his stock to avoid the liability, leaving the shares in the name of his agent or

causing that agent to put the same in the names of irresponsible people. In effect controlling the affairs of the bank, Dewey delays the open failure until by a change of the situation, although the indebtedness of the bank may not have diminished, yet, by a mere substitution of creditors, the particular debts due at the time of his fraudulent transfers have largely been extinguished. And thus, when the open failure comes, it is now decided that, as to the shares fraudulently transferred by his agent, Dewey owes nothing towards payment of the debts of the bank, except as to debts still existing, which were contracted prior to the fraudulent transfers. In other words, it is held that although the bank was insolvent prior to and at the time of the commission of the fraudulent acts and continued so to the time of the failure, the fraudulent transferrer has accomplished the wrong which the statute was intended to prevent by holding back and preventing the open failure until he had discharged, at the expense of the subsequent creditors of the bank, the indebtedness existing at the time of the fraudulent transfers. Under the rule hitherto prevailing the duty of the administrative officer was plainly marked out in the statute, to realize the assets, and, if necessary to meet a deficiency of assets, to assess ratably the legal stockholders—a simple and effective rule. Now the duty of the administrative officer is wholly changed. He must analyze the situation at the bank, he must determine who were creditors at this time and that, in order to fix the liability of stockholders, and when this process is gone through with, instead of levying the equal and ratable statutory liability, he must call upon the shareholders for unequal and unratable contributions.

I can see no reason for now changing the construction of the national banking act as applied in forty years of administration, as embodied in the text and spirit of the statute and as sanctioned by a long line of decisions of this court, especially when the inevitable consequence of such change will, in my judgment, operate to the detriment of the public interest and the security and stability of national banks which it was the purpose of Congress by the statute to secure.

It remains only to briefly notice the case of *Peter* v. *Union Mfg. Co.*, (56 Ohio St. 181,) heretofore referred to and cited by the court in its opinion. To understand that case a prior decision of the Supreme Court of Ohio, *Brown* v. *Hitchcock*, (36 Ohio St. 667,) of which the opinion in the Peter case was but an evolution, must be taken into view. In *Brown* v. *Hitchcock*, interpreting the Ohio law, the Supreme Court of Ohio held that by the effect of the Constitution and laws of that State a stockholder in an Ohio corporation who was subjected to a double liability was impotent to dispose of his stock, however *bona fide* might be the sale or disposition thereof, so as to escape liability to creditors who were such at the time of the transfer. In other words, the court held that the effect of that double liability imposed by the Ohio statutes was to prevent an efficacious

transfer of the stock without the consent of the creditors, since such creditors, despite a *bona fide* sale, as long as debts contracted previously remained unsatisfied, had the power, if circumstances required, to proceed against the stockholders who were such at the time the debt was contracted, and this irrespective of whether the corporation was at the time of the transfer solvent or insolvent. Subsequently, in the Peter case, the Ohio court was called upon to determine how far a transfer of stock by a stockholder in an Ohio corporation operated to relieve him from future debts of the corporation. As to this question the court, in effect, applied to the Ohio statutes the English "out and out" rule; in other words, that court, whilst reiterating its ruling as to existing creditors, decided that a stockholder who made an out and out sale, although the corporation was insolvent and the purpose was to escape the double liability, was discharged from any responsibility to future creditors, although remaining liable to existing creditors. The difference between the Ohio statutes, as thus expounded, and the national banking act, as expounded by this court, is at once demonstrated by the statement that under the national banking act the stockholder, as repeatedly decided by this court, has a right, when acting in good faith, to dispose of his stock and escape liability both as to existing and future creditors, and that the theory of out and out transfers as to future debts, applied by the Ohio court to the statute of that State, was expressly repudiated by this court as to the national banking act in the Case and subsequent decisions. To treat then the Ohio case as authoritative here is, in effect, but to expunge the national banking act from the statutes of the United States and to substitute in its stead the statutes of Ohio, when such statutes have a wholly different significance as interpreted by the highest court of that State.

I therefore dissent.

I am authorized to say that Mr. Justice McKENNA and Mr. Justice DAY concur in this dissent.

True copy.

Test:

Clerk Supreme Court, U. S.